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**THE CONSTITUTION AND JURISDICTION
OF COURTS OF CIVIL JUSTICE IN
BRITISH INDIA.**

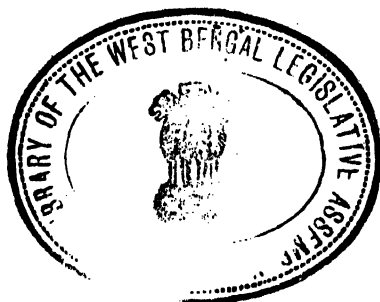
THE
CONSTITUTION AND JURISDICTION
OF COURTS OF CIVIL JUSTICE
IN BRITISH INDIA



BY

SIR ERNEST JOHN TREVELYAN, D.C.L.

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AUTHOR OF "THE LAW RELATING TO MINORS IN BRITISH INDIA" ; "HINDU LAW," ETC.

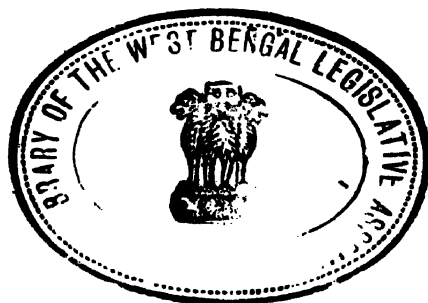


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PREFACE.

I HAVE long thought that a book on the Jurisdiction of Civil Courts in India may be of considerable help to practitioners.

There is, as far as I am aware, no book in which the jurisdiction—original, appellate, and revisional—of the several Courts, and the cases in which such jurisdiction can be exercised, are to be found.

I have endeavoured to make the list as complete as possible, and in addition to the jurisdiction given to the High Courts, the Courts in the several Provinces, and the general jurisdiction of Civil Courts, I have dealt with the Acts which give special powers to the Courts, and also with special tribunals.

E. J. TREVELYAN.

1923.

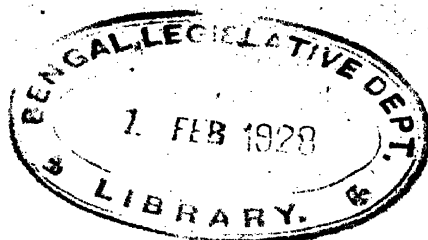


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CONSTITUTION AND JURISDICTION OF CIVIL COURTS IN BRITISH INDIA.

PART I.

PRELIMINARY.

CHAPTER I.

CONSTITUTION AND JURISDICTION OF CIVIL COURTS.

THE expression "Constitution" in this book includes the number of judges required for the several Courts of Civil Justice, their designations, their qualifications, and a statement of the authorities having power to appoint, suspend, or dismiss them. "Constitution."

The expression "jurisdiction," which is of varied significance, is in this book treated as meaning the extent of the authority which has been entrusted to the several Courts in British India to administer justice, either as Courts of original jurisdiction or as Courts of appeal. It does not include the machinery and procedure available for that purpose. Meaning of "jurisdiction."

"Jurisdiction" may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it.¹ It means the authority or power to act in a matter, and not authority or power to do an act in a particular manner or form.²

Such jurisdiction is subject to limitations having regard to the subject-matter, nature, and value of the suit or other proceeding, the place where the cause of action arose, the

¹ *Sukhlal v. Tarachand* (1905), 88 Cal., 68, at p. 71; 9 C. W. N., 1046, at p. 1048; *Hriday Nath Roy v. Ram Chandra Barna Sarma* (1920), 48

Cal., 188, at pp. 146, 147.

² *Teyen v. Ram Lal* (1890), 12 All., 115, at p. 123.

place of residence of the defendant and the place where he resides or carries on business.¹

Authority of Courts derived from Parliament.

In British India there is no Court of Justice, as there is no legislative or executive authority, which does not directly, or indirectly, owe its establishment and powers to Acts of Parliament.

High Courts.

The High Courts owe their constitution and jurisdiction to such Acts, and to Letters-Patent issued by the Crown in pursuance of authority given thereby. They also in some cases exercise authority given to them by Acts of Parliament and by enactments of the Indian and Provincial legislatures.

Subordinate Courts.

The other Courts of Justice in British India owe their establishment and jurisdiction to enactments of the Indian Legislature made in pursuance of powers given by Parliament.

Except by authority which has been committed to it by the Legislature a Court is not competent to try a case or to perform any other judicial act.²

Delegation of Judicial Act.

A Court cannot, unless expressly authorised so to do, delegate to an officer, to a commissioner, or to any other person authority to perform a judicial act.³

The jurisdiction of a Court depends not merely upon the nature or subject-matter of the suit, but also in the case of most subordinate Courts upon the pecuniary value of the suit and in the case of all Courts upon the territorial limits of their jurisdiction.⁴

Jurisdiction only over persons brought before Court.

Courts of Justice have only power to deal with persons brought before them by regular process of law.⁵

Powers of Indian Legislatures.

Except that it cannot abolish a High Court without the approval of the Secretary of State for India in Council,⁶ the Indian Legislature can abolish existing Courts or amend their constitution and jurisdiction, and can create new Courts.⁷

¹ As to the meaning of the expression "jurisdiction" in s. 115 of the Civil Procedure Code (Act V of 1908), see *post*, pp. 360, 361.

² *Jannat Hussain (Sheikh) v. Gulam Kutubuddin Ahmad (Sheikh)* (1920), 5 Pat. L. J., 588; [1920 Pat.], 274, at p. 275.

³ *Sawan Mal v. Ramag Mal-Chuni Lal* (1922), 3 Lahore, 209. See *post*, p. 67.

⁴ *Jannat Hussain (Sheikh) v. Gulam Kutubuddin Ahmad (Sheikh)*

(1920), Pat. L. J., 588; [1920 Pat.], 274, at 275.

⁵ *Ramnidhy Koondoo v. Ojoodhyaram (Rajah)* (1873), 11 B. L. R., App. 37. See *Collector of Hooghly v. Tarak Nath Mukhopadhyaya* (1871), 7 B. L. R., 449; 16 W. R. C. R., 63.

⁶ 5, 6 Geo. V. c. 61, s. 65 (3).

⁷ *Parmeshwar Ahir v. Emperor* (1918), 8 Pat. L. J., 537; [1918 Pat.], 97; *Sheonandan Prasad Singh v. King-Emperor*, 8 Pat. L. J., 581; [1919 Pat.], 1. See *Queen v. Burah*

The Indian Legislature cannot, unless expressly so authorised by Act of Parliament, make any law repealing or affecting any Act of Parliament passed after the year 1860, and extending to British India.¹

A distinct unequivocal enactment is required for the purpose of adding to, or taking away, the jurisdiction of a Court.²

A local legislature of a Province has similar powers,³ but it cannot without the previous sanction of the Governor-General repeal or alter as to that Province any law made by any authority in British India other than such local legislature, and cannot make any law affecting any Act of Parliament.⁴ It has authority to make laws regulating rights and obligations in its Province, but they cannot affect the jurisdiction of a High Court in dealing with those rights and obligations.⁵

An Indian Legislature cannot take away a remedy against the Secretary of State, which a party would have had, if the Government of India Act, 1858,⁶ had not been passed.⁷

The Governor-General can make Regulations for the establishment of Courts of Justice in certain places.⁸

No authority other than the above can establish, or give jurisdiction to, or take jurisdiction from, any Court of Justice in British India.⁹

Certain Regulations were enacted by the Governments of Bengal, Bombay and Madras previously to the 3, 4 Wm. IV. c. 85.

The Governor-General in Council may by notification, declare, appoint, or alter the boundaries of any of the Provinces into which British India is for the time being divided, and distribute the territories of British India among

Alteration of
boundaries of
Provinces.

(1878), 5 I. A., 178; 4 Calc., 172; Letters-Patent, *post*, pp. 69, 70, 76, 83, 88, 94; 5, 6 Geo. V. c. 61, s. 65; 9, 10 Geo. V. c. 101, Sch. II, part 2.

¹ 5, 6 Geo. V. c. 61, s. 65.

² *Abdullahbai v. Executive Committee, Aden* (1916), 40 Bom., 446, at p. 459; 18 Bom. L. R., 296, at p. 307; *Sashi Bhusan Hasra v. Eshabar Ali (Sheikh)* (1915), 19 C. W. N., 686.

³ *Cf. Premshankar Raghunathji v. Government of Bombay* (1871), 8 Bom. H. C. A. C., 195.

⁴ 9, 10 Geo. V. c. 101, s. 10 (4). *Cf. Mahadevi Govind v. Sonu* (1872), 9 Bom. H. C., 249, at p. 251.

⁵ *Cf. Collector of Thana v. Bhaskar Mahadev Sheth* (1984), 8 Bom., 264;

Premshankar Raghunathji v. Government of Bombay (1871), 8 Bom. H. C. A. C., 195.

⁶ 21, 22 Vict. c. 106.

⁷ 5, 6 Geo. V. c. 61, s. 32 (2). *Secretary of State v. Moment* (1912), 40 I. A., 48; 40 Calc., 391; 17 C. W. N., 169; 15 Bom. L. R., 27, as explained in *Secretary of State v. Jawahir Lal* (1915), 37 All., 388, and *Damodar v. Secretary of State* (1921), 45 Bom., 1161; 23 Bom. L. R., 492.

⁸ See 5, 6 Geo. V. c. 61, s. 71; 33, 34 Vict. c. 3, s. 1.

⁹ See *Abdullahbai v. Executive Committee, Aden* (1916), 40 Bom., 446; 18 Bom. L. R., 296.

the several Provinces thereof in such manner as may seem expedient, subject to these qualifications, namely—

- (1) An entire district may not be transferred from one Province to another without the previous sanction of the Crown ; and
- (2) Any notification under this section may be disallowed by the Secretary of State in Council.¹

Effect of notification.

The effect of such notification is to determine the local jurisdiction of Courts of Justice in the territory so transferred.² It does not affect the law for the time being in such territory.³

Appointment of Judges.

The power to appoint judges of the several Courts is to be found in the respective enactments creating those Courts. This power rests with the Crown in the case of the High Courts and with the Governor-General in Council or the Local Government, as the case may be, in the case of most other Courts.

Power to appoint acting Judges.

In every case in which the Governor-General of India in Council or the Local Government, as the case may be, has power under any Act or Regulation to appoint a Judge of any Court in British India, such power includes the power to appoint any person capable of being appointed a permanent Judge of the same Court for such time as the Governor-General or the Local Government, as the case may be, shall direct.

Their powers and duties.

Every person so appointed to act temporarily has the powers and performs the duties which he would have had and been liable to perform in case he had been duly appointed as permanent Judge of the same Court.⁴

As to the appointment of acting Judges of High Courts, see *post*, p. 22.

Supreme Courts.

In each Province in British India there is a supreme Court, which is the highest Civil and Criminal Court of appeal and revision in that Province.

In the Provinces of Bengal, Madras, Bombay,⁵ that part of the United Provinces which used to be called the North-west Provinces,⁶ Bihar and Orissa,⁷ the Punjab,⁸ and Burma⁹ the

¹ 5, 6 Geo. V. c. 61, s. 60; 28, 29 Vict. c. 17, s. 4.

² *Kesho Prasad Singh (Maharaja) v. Nirmal Kumar* (1920), 5 Pat. L. J., 451.

³ 5, 6 Geo. V. c. 61, s. 61.

⁴ Act XVI of 1867, s. 1.

⁵ *Post*, chap. iii.

⁶ *Post*, chap. iv.

⁷ *Post*, chap. v.

⁸ *Post*, chap. vi.

⁹ *Post*, chap. vii.

supreme Court is designated a High Court, and has been constituted by Letters-Patent.

In Ajmere¹ the Chief Commissioner is the highest Court of Civil appeal, but certain references have to be made to the High Court of Allahabad,² and in certain cases there is an appeal to that Court.³

In British Baluchistan,⁴ the Central Provinces,⁵ Coorg,⁶ Oudh,⁷ the North-West Frontier Provinces,⁸ and Sind (except Karachi)⁹ the Court of the Judicial Commissioner is the highest Court of appeal and revision.

In the several Provinces there are subordinate Courts of varying jurisdiction, and there are certain Courts constituted for special purposes such as those constituted under the Land Acquisition Act,¹⁰ under the Indian Forest Act,¹¹ and under the Calcutta¹² and Bombay¹³ Improvement Acts.

There are also Small Cause Courts throughout the whole of British India.¹⁴

There are various enactments giving special jurisdiction to certain Courts, such as the Indian Divorce Act,¹⁵ the Insolvency Acts,¹⁶ the Copyright Act,¹⁷ and the Probate and Administration Act.¹⁸

There are also powers given to the Revenue authorities to determine certain suits between landlord and tenant.¹⁹

Members of the Indian Civil Service are alone eligible for the following (amongst other) appointments: Members of the Board of Revenue in the presidencies of Bengal and Madras, the United Provinces of Agra and Oudh, and the Province of Bihar and Orissa. In the Provinces which were known in 1861 as Regulation provinces they are alone eligible for the offices of District Judges, additional District Judges, Commissioners of Revenue, Collectors of Revenue or chief Revenue Officers of districts.²⁰

A Court of original jurisdiction or of appeal²¹ must decide a Court to decide

¹ *Post*, chap. ix.

² Reg. I of 1877, ss. 21, 28.

³ *Ibid.* s. 17.

⁴ Reg. IX of 1896, ss. 7 (1), 8, *post*, p. 167.

⁵ C. P. Act I of 1917, s. 3, *post*, p. 188.

⁶ Reg. I of 1901, s. 7 (1).

⁷ Act XIII of 1879, ss. 10, 18.

⁸ Reg. VII of 1901, s. 42.

⁹ Bom. Act I of 1906.

¹⁰ Act I of 1894.

¹¹ Act VII of 1878.

¹² Ben. Act V of 1911.

¹³ Bom. Act IV of 1898.

¹⁴ *Post*, chaps. xxiv, xxv, xxvi.

¹⁵ Act IV of 1869.

¹⁶ Acts III of 1909 and V of 1920.

¹⁷ Act III of 1914.

¹⁸ Act V of 1881.

¹⁹ *Post*, chap. lvii.

²⁰ 5, 6 Geo. V. c. 81, sched. 8.

²¹ See *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197, at

question of jurisdiction.

question of jurisdiction, although it be not specifically raised,¹ provided it be possible for it to do so on the materials placed before it.

In *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197; 42 Calc., 116; 18 C. W. N., 994; 16 Bom. L. R., 824, the Judicial Committee entertained a question of jurisdiction which was not specifically raised in the appeal.

Time for objection.

Except that an objection as to the place of suing must be taken at the earliest opportunity,² and that an objection under the Suits Valuation Act³ must be taken in the Court of First Instance at or before the hearing or in an appeal in the memorandum of appeal or the Court is satisfied that the error affected the merits,⁴ an objection to jurisdiction can be taken at any stage of the proceedings,⁵ if such objection goes to the root of the validity of the proceedings.

It can be raised for the first time on appeal provided that it can be decided on the record as it stands and involves no inquiry into any question of fact.⁶

Second appeal.

Where a question of jurisdiction is one of fact, it cannot be questioned in second appeal.⁷

Effect of want of jurisdiction.

An erroneous order by a Court having jurisdiction can be set aside only on review, appeal, or revision,⁸ but a judgment given, or an order made, without jurisdiction is of no effect.⁹ No proceeding to have it set aside is necessary.¹⁰

pp. 204, 205; 42 Calc., 116, at p. 136; 18 C. W. N., 994, at p. 1003; 16 Bom. L. R., 824, at p. 884.

¹ *Asa Ram Kalu Ram v. Ram Kanahya Ram (Bakhshi)* (1919), 1 Lahore, 208.

² Act V of 1908, s. 21. See *Gomatham Alamelu v. Komandur Krishnamachariu* (1908), 27 Mad., 118.

³ Act VII of 1887, s. 11.

⁴ *Post*, p. 15.

⁵ See *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 180; 11 Mad., 26; *Krishnan Chetti v. Muthu Palandi* (1898), 22 Mad., 172; *Kumaramani Reddiar v. Subbaraya Reddiar* (1899), 22 V. C., 314; *Rachappa Subrag v. A. A. Venkatrao* (1918), 46 I. A., 24; *Red Sin*, 507; 21 Bom. L. R., 489. See *1920*, *ver, Naro Hari v. Anpurnabai* (1874), 1 Bom., 160.

⁶ *Daulatla v. Har Gobind* (1920), 48 All., 18.

⁷ See *Raj Narain v. Rowshun Mull*

(1874), 22 W. R. O. R., 124.

⁸ *Chutterput Singh v. Sadasook Kotary* (1917), 21 C. W. N., 1052.

⁹ *Jadu Nath Manna v. Prankrishna Das* (1917), 45 Calc., 769; *Rajlakshmi Dasee v. Katyayani Dasee* (1910), 38 Calc., 639; *Golab Sao v. Chowdhury Madho Lal* (1905), 9 C. W. N., 956; *Naunhoo Singh v. Tofan Singh* (1870), 14 W. R. C. R., 228; *Raghu Singh v. Usuf Ali* (1918), 4 Pat. L. J., 202; *Krishna Kishore De v. Amarnath Khettry* (1920), 47 Calc., 770; 24 C. W. N., 688. This applies equally to cases when the objection to jurisdiction arises in respect of the valuation of the suit: see *Mohini Mohan Misser v. Gour Chandra Rai*, 5 Pat. L. J., 897; [1921 Pat.], 105.

¹⁰ *Golab Sao v. Chowdhury Madho Lal* (1905), 9 C. W. N., 956; *Jungli Lal v. Laddhu Ram Marwari* (1919), 4 Pat. L. J., 240.

"Where a Court judicially considers and adjudicates the question of its jurisdiction over the case, the decision is conclusive till it is set aside in an appropriate proceeding. But where there has been no such adjudication, the decree remains a decree without jurisdiction."¹

A decision obtained on a fraudulent misrepresentation² or Fraud. suppression of a fact,³ upon which the jurisdiction is based, is liable to be set aside.

Except in the case of an express provision of law⁴ the parties cannot by arrangement, consent, waiver,⁵ or omission to plead the absence of jurisdiction⁶ give to a Court, whether in the exercise of original or appellate jurisdiction,⁷ a jurisdiction over the subject matter which it does not otherwise possess, or take away from it a jurisdiction which it possesses.

"When the judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent, convert it into a proper judicial process,⁸ although they may constitute the judge their arbiter, and be bound by

Consent or
waiver.

Arbitration by
Judge.

¹ *Krishna Kishore De v. Amarnath Khettry* (1920), 47 Cal., 770, at p. 781; 24 C. W. N., 683.

² See *Sarat Chandra Mukerji v. Mahomed Hossein* (1904), 8 C. W. N., 468.

³ *Rashmoni Dassi v. Ganoda Sundari Dassi* (1914), 19 C. W. N., 84, at p. 88. See *Harendra Lal Roy Chowdhuri v. Hari Dasi Debi* (1914), 41 I. A., 110; 41 Cal., 972; 18 C. W. N., 817; 16 Bom. L. R., 400.

⁴ For illustrations of jurisdiction given by contract, see clause 13 of the Charter of the late Supreme Court at Calcutta, 1774, and Act XV of 1882, s. 20.

⁵ *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11 Mad., 26; *Ledgard v. Bull* (1886), 13 I. A., 184; 9 All., 191; *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197, at p. 215; 42 Cal., 116, at p. 149; 18 C. W. N., 994, at p. 1010; 16 Bom. L. R., 824, at p. 844; *Rajlakshmi Dasee v. Katyayani Dasee* (1910), 38 Cal., 639; *Ramrao v. Babaji* (1895), 20 Bom., 680; *Aklemannessa Bibi v. Mahomed Hatem* (1904), 31 Cal., 849; 8 C. W. N., 705; *Davlatsinhji (Maharana*

Shri) v. Khachar Hamir Mon (1909), 84 Bom., 171; 11 Bom. L. R., 1330; *Shama Kanta Chatterji v. Kusumkumari* (1916), 44 Cal., 10; *Kumarasami Reddiar v. Subbaraya Reddiar* (1899), 23 Mad., 314; *Aukhil Chunder Sen Roy v. Mohiny Mohun Dass* (1879), 5 Cal., 489; 4 C. L. R., 491; *Golab Sao v. Chowdhury Madho Lal* (1905), 9 C. W. N., 956; *Babaji v. Lakshmidai* (1884), 9 Bom., 266; *Crawley v. Luchmee Ram* (1866), 1 Agra, 129; *Government of Bombay v. Ranmalsingji Amarsingji* (1872), 9 Bom. H. C., 242; *Lallmoney Dossee (Sreemutty) v. Jodoo Nath Shaw* (1862), 1 Ind. Jur. N. S., 319.

⁶ *Ramprosad Pramanik v. Sricharan Mandal* (1917), 21 C. W. N., 1109; *Ladli Begam (Bibi) v. Raje Rabia (Bibi)* (1888), 13 Bom., 650; *Naunhoo Singh v. Tofan Singh* (1870), 14 W. R. C. R., 228.

⁷ *Hurdwary Mull v. Ahmed Musaji Selaji* (1908), 13 C. W. N., 68; Act IX of 1872, s. 28. See *Mulji Tejsing v. Ransi Devraj* (1909), 34 Bom., 13; 11 Bom. L. R., 273.

⁸ *Ladli Begam (Bibi) v. Raje Rabia (Bibi)* (1888), 13 Bom., 650.

his decision on the merits when these are submitted to him."¹

Waiving
inquiry as
to facts.

The rule that parties cannot by consent give jurisdiction applies only when the law confers no jurisdiction. It does not prevent the parties waiving inquiry by the Court as to facts necessary for the determination of the question of jurisdiction, where that question depends on facts to be ascertained.²

Waiver of
irregularities.

"When, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon grounds that there were irregularities in the procedure, which, if objected to at the time, would have led to the dismissal of the suit."³

Where it can be waived an irregularity does not amount to a nullity. Where it cannot be waived the action of the Court is a nullity.⁴

In civil cases irregularities of procedure, which do not have the effect of giving jurisdiction, can be waived by the parties, *e.g.*—

- (a) trying a case on evidence which had been recorded by another judge;⁵
- (b) trying a case on a close holiday;⁶
- (c) making an erroneous order of remand;⁷
- (d) allowing evidence to be taken in a way not sanctioned by law;⁸
- (e) an irregularity in the delivery of the judgment.⁹

Waiver of per-
mission to sue.

Unless the plaintiff sets up the complete jurisdiction of the Court,¹⁰ it has been held to be possible to waive the necessity for leave to institute a suit under clause 12¹¹ of the Letters-

¹ *Ledgard v. Bull* (1886), 13 I. A., 134, at p. 145; 9 All., 191, at p. 203; followed in *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11 Mad., 26.

² *Baretto v. Rodrigues* (1910), 35 Bom., 24; 12 Bom. L. R., 712.

³ *Ledgard v. Bull* (1886), 13 I. A., 134, at p. 145; 9 All., 191, at p. 203; followed in *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11 Mad., 26, and *Sankumani v. Ikoran* (1889), 13 Mad., 211; *Vishnu Sakhararam v. Krishnarao Malhar* (1886), 11 Bom., 158; *Gurdeo Singh v. Chandrikah Singh* (1907), 86 Cal., 198.

⁴ *Sarjugsharan Lal v. Dakshit Mahato* (1913), 17 C. W. N., 496.

⁵ *Mahomed (Syud) v. Oomdah Kha-*

num (1870), 18 W. R. C. R., 184.

⁶ *Ram Das Chakarhati v. Official Liquidator, Cotton Ginning Co.* (1887), 9 All., 866.

⁷ *Baikuntha Nath Dey v. Salimulla Bahadar (Nawab)* (1907), 12 C. W. N., 590.

⁸ *Ramaya v. Devappa* (1905), 30 Bom., 109; 7 Bom. L. R., 692.

⁹ *Fort Gloster Jute Manufacturing Co. v. Chandra Kumar Das* (1919), 46 Cal., 978; 24 C. W. N., 791.

¹⁰ *Shamakanta Chatterji & Co. v. Kusum Kumari* (1916), 44 Cal., 10, in which case the plaint alleged, erroneously, that the whole cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction of the High Court.

¹¹ *Post*, pp. 38, 39.

Patent of the High Courts of Bengal, Madras, and Bombay, or under clause 10 of the Letters-Patent of the High Court at Rangoon, or other necessary sanction, by taking steps in the suit, such as filing a written statement.¹

It is submitted that if the question be raised in the written statement, the filing of the statement does not amount to a waiver.

Where there is an inherent absence of jurisdiction no subsequent action or conduct will validate the institution of a proceeding instituted without jurisdiction.² Subsequent event.

When the Judge has inherent jurisdiction³ over the subject-matter of the proceeding a defendant can, apparently, in case he has voluntarily submitted to the jurisdiction by contesting the case, be estopped from denying the jurisdiction.⁴ Submission to jurisdiction.

An objection to the jurisdiction would show that there was no voluntary submission.⁵ The omission to apply for a transfer of a suit does not amount to a waiver.⁶

A privilege of exemption from suit can be waived.⁷ Such waiver in a previous suit does not prevent the assertion of such privilege in a subsequent suit.⁸ Waiver of privilege.

Generally speaking, the jurisdiction of the Courts is independent of the nationality of the parties of the suit.⁹ Nationality of parties.

Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of His Majesty.¹⁰ Aliens.

¹ *King v. Secretary of State* (1908), 85 Calc., 394; 12 C. W. N., 705. See also *Saraswati Dassee (Srimati) v. Biraj Mohini Dassee (Srimati)* (1913), 17 C. W. N., 512; *Abdul Kadir v. Doolanbibi* (1913), 37 Bom., 569; 15 Bom. L. R., 672.

² *Tata Iron and Steel Company v. Raghunath Mahto*, [1918 Pat.], 65, at p. 68.

³ See *Secretary of State v. Vydya Pillai* (1898), 17 Mad., 193.

⁴ See *Harchand Panaji v. Gulabchand Kanji* (1914), 16 Bom. L. R., 620; *ex parte Manohar Bhivray* (1865), 2 Bom. H. C., 2nd ed., 874; *Kandoth Mammí v. Neelancherayil* (1875), 8 Mad. H. C., 14.

⁵ *Narayana Moothad v. Cochin Sirkar* (1915), 89 Mad., 661.

⁶ *Ratan Chand Dharam Chand v.*

Secretary of State (1914), 18 C. W. N., 1840.

⁷ See *Chandulal v. Awad* (1896), 21 Bom., 351.

⁸ *Beer Chunder Manickya v. Rajcoomar Nobodeep Chunder Deb Burmono* (1888), 9 Calc., 585; 12 C. L. R. 465.

⁹ *Olner v. Lavesso* (1884), 10 Calc., 878; *Rambhat v. Shankar Baswant* (1901), 25 Bom., 528; 8 Bom. L. R., 82; *Moasim Hossein (Syed) v. Robinson* (1901), 5 C. W. N., 741. See *Annamalai Chetty v. Murugasa Chetty* (1903), 30 I. A., 220; 26 Mad., 544; 7 C. W. N., 754; 5 Bom. L. R., 494; *Tadepalli Subba Rao v. Mir Gulam Allikhan (Nawab Syed)* (1905), 29 Mad., 69.

¹⁰ Act V of 1908, s. 83 (1).

No alien enemy residing in British India, without such permission, or residing in a foreign country, shall sue in any of such Courts.¹

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for this purpose, be deemed to be an alien enemy residing in a foreign country.²

A Court has jurisdiction to make a decree against a foreigner not resident within British India provided that the subject-matter of the suit be within its territorial and pecuniary jurisdiction,³ but if the foreigner is not domiciled in British India a foreign Court will not recognise such decree.⁴

Jurisdiction, being properly territorial, attaches with certain restrictions, upon every person permanently or temporarily resident within the territory, while they are within it. It does not follow a foreigner after his withdrawal thence, and when he is living in another State. Jurisdiction exists always as to land within the territory, and it may be exercised over movables within the territory. In questions of status or succession governed by domicile, it may exist as to persons domiciled, or who, when living, were domiciled within the territory. But no territorial legislation can give jurisdiction, which any Foreign Court ought to recognise, against foreigners who owe no allegiance or obedience to the State which so legislates.⁵

As to suits by and against foreign and native rulers, see Civil Procedure Code,⁶ ss. 84-86, *post*, pp. 327, 328.

Ascertainment of jurisdiction.

The jurisdiction of a Court to entertain a suit or petition must be ascertained from the allegations in such plaint or petition,⁷ but it may turn out on the evidence or on the law that the particular Court has no jurisdiction to try the suit.

¹ Act V of 1908, s. 83 (2).

² *Ibid.* s. 83 (3). *Ali Jan (Haji) v. Abdul Jalil Khan* (1920), 1 Lahore, 276.

³ *Rambhat v. Shankar Baswant* (1901), 25 Bom., 528; 3 Bom. L. R., 82; *Hargopal Premnukdas v. Abdul Khan* (1872), 9 Bom. H. C., 429; *Ram Rajvi Jambhekar v. Pralhadas Subkarn* (1895), 20 Bom., 183; *Girdhar Damodhar v. Kassigar Hiragar* (1893), 17 Bom., 662. See, however, *Kesowjee Damodar Jairam v. Khimji Jairam* (1888), 12 Bom., 507.

⁴ See *Gurdayal Singh (Sirdar) v.*

Rajah of Faridkote (1894), 21 I. A., 171; 22 Calc., 222; *Kassim Mamoojee v. Isuf Mahomed Sulliman* (1902), 29 Calc., 509; 6 C. W. N., 829.

⁵ *Gurdayal Singh (Sirdar) v. Rajah of Faridkote* (1894), 21 I. A., 171, at p. 185; 22 Calc., 222, at p. 238.

⁶ Act V of 1908.

⁷ *Rajiva Narayan Sahay v. Kirat Narayan Singh* (1917), 3 Pat. L. J., 423; [1918 Pat.], 55; *Mohammad Abdul Ghafoor (Sheikh) v. Mahtab Chowdhury* (1917), 2 Pat. L. J., 894; *Madho Das v. Ramji Patak* (1894), 16 All., 286. Cf. *Lakshmandas v.*

If the jurisdiction depends upon a disputed question of fact, the plaintiff may have to satisfy the Court as to the existence of the fact in dispute.¹

The nature of the defence or the action of the defendant does not alter the jurisdiction of the Court² but it is competent to the defendant or respondent, as the case may be, to show that in fact or in law the jurisdiction claimed by the plaintiff or appellant does not exist.

The jurisdiction of Courts, other than High Courts, depends in many cases upon the value of a suit or an appeal.³

Valuation of suit or appeal.

The valuation of suits and appeals is dealt with by the Suits Valuation Act, 1887.⁴

In such local areas as the Governor-General directs, the Local Government, subject to the control of the Governor-General in Council, may make rules for determining the value of land for the purpose of jurisdiction in suits for the possession of land, to enforce a right of preemption or for specific performance of an award.⁵

Rules for determining value of land.

The following provisions of the Act apply to the whole of British India,⁶ including British Baluchistan⁷ and Upper Burma (except the Shan States).⁸

Where in suits other than suits for land,⁹ suits to enforce a right of preemption,¹⁰ against a mortgagee to recover the property mortgaged,¹¹ and for specific performance of an award,¹² Court fees are payable *ad valorem* under the Court Fees Act, 1870,¹³ the value as determinable¹⁴ for the computa-

Court-fee value and jurisdictional value same in certain suits.

Lane (1904), 32 Bom., 356; 6 Bom. L. R., 781. See *post*, p. 12.

¹ See Act I of 1872, s. 101.

² See *Issur Singh v. Bergmann* (1908), 30 Calc., 627; *Aliba v. Nanu* (1886), 9 Mad., 218; *Chappan v. Raru* (1912), 37 Mad., 420; *Rajiva Narayan Sahay v. Kirat Narayan Singh* (1917), 8 Pat. L. J., 428; [1918 Pat.], 55; *Chandu v. Kombi* (1885), 9 Mad. 208.

³ *E.g.* see Acts XII of 1887, s. 21, *post*, pp. 112, 127; XIV of 1869, s. 16, *post*, p. 142; Act XI of 1922, s. 9, *post*, p. 178; C. P. Act I of 1917, ss. 17, 20, *post*, pp. 191, 192; Act III of 1878, ss. 12, 13.

⁴ VII of 1887.

⁵ Acts VII of 1887, ss. 3 (1), 4; VII of 1870, s. 7; XXXVIII of 1920, Sch. I.

⁶ Act VII of 1887, ss. 7, 11 (b).

⁷ Reg. II of 1913, s. 3.

⁸ Act XIII of 1898, s. 4.

⁹ Act VII of 1870, s. 7, para. vi. Suits for partition of land (*Dagdu v. Totaram* (1909), 33 Bom., 658; 11 Bom. L. R., 1074), or for redemption (*Kedar Singh v. Matabadal Singh* (1908), 31 All. 44), are suits for land within the meaning of the above section. A suit by a person in possession for a declaration of right to land is not such suit for land (*Hari Sanker Dutt v. Kalikumar Patra* (1905), 32 Calc., 784; 9 C. W. N., 690; *Vachhani v. Vachhani* (1908), 33 Bom., 307; 11 Bom. L. R., 30. Cf. *post*, pp. 40-43).

¹⁰ Act VII of 1870, s. 7, para. vi.

¹¹ *Ibid.* para. ix.

¹² *Ibid.* para. x (clause d).

¹³ Act VII of 1870.

¹⁴ *I.e.* by the Court: *Dayaram v.*

tion of Court fees and the value for purposes of jurisdiction is the same.¹

Thus, except in the above cases, a plaintiff cannot value his suit for the purpose of Court fees and for the purpose of jurisdiction at different amounts.²

The effect of this provision is that except where the plaintiff has overvalued or undervalued the suit for improper motives³ or in a wrong or arbitrary way,⁴ the Court will ordinarily accept the valuation for the purpose of jurisdiction set forth in the plaint⁵ in suits other than those above specifically referred to, provided it agrees with the value declared or determined⁶ as payable for the purpose of Court fees.⁷

If the valuation be disputed, the Court must determine the correct valuation.⁸

Although a plaintiff has considerable control over the fixing of the jurisdictional value of a suit, the law does not contemplate that he should assign an arbitrary value to the subject-matter of the suit,⁹ and thereby choose capriciously the form of trial and appeal.¹⁰

Gordhandas (1906), 31 Bom., 73; 8 Bom. L. R., 885.

¹ Act VII of 1887, s. 8.

² *Harihar Prasad Singh v. Shyam Lal Singh* (1918), 40 Calc., 615; *Shashi Bhusan Bose v. Manindra Chandra Nandy* (1916), 44 Calc., 890.

³ *Jan Mahomed Mandal v. Mashar Bibi* (1907), 34 Calc., 852; 11 C. W. N., 458; *Zair Husain Khan v. Khurshed Jan* (1906), 28 All., 545; *Nimoney Singh v. Jagabaddhu Roy* (1896), 23 Calc., 536.

⁴ *Dukhi Singh v. Harihar Shah* (1920), 5 Pat. L. J., 540; [1921 Pat.], 89.

⁵ *Chappan v. Raru* (1912), 87 Mad., 420; see *Mahabir Singh v. Behari Lal* (1891), 13 All., 320; *Sunderbai v. Collector of Belgaum* (1918), 46 I. A., 15; 43 Bom., 376; 23 C. W. N., 758; 21 Bom. L. R., 1148; *Madho Das v. Ramji Patak* (1894), 16 All. 286.

⁶ See Act VII of 1870, s. 12.

⁷ See *Hari Sanker Dutt v. Kali Kumar Patra* (1905), 32 Calc., 734; 9 C. W. N., 690, distinguishing *Kirty Churn Mitter v. Aunath Nath Deb* (1882), 8 Calc., 757, and *Boidya Nath Adya v. Makhan Lal Adya* (1890), 17

Calc., 680; *Vachhani v. Vachhani* (1908), 33 Bom., 307; 11 Bom. L. R., 80, distinguishing *Dayaram v. Gordhandas* (1906), 31 Bom., 73; 8 Bom. L. R., 885; *Sardarsingji v. Ganpat-singji* (1892), 17 Bom., 56; *Varunda Lakshmi (Bai) v. Manegavri (Bai)* (1893), 18 Bom., 207; *Shao Deni Ram v. Tulshi Ram* (1893) 15 All., 378; *Velu Goundan v. Kumaravelu Goundan* (1896), 20 Mad., 289; *Shashi Bhusan Bose v. Manindra Chandra Nandy* (1916), 44 Calc., 890; *Sunderbai v. Collector of Belgaum* (1918), 46 I. A., 15; 43 Bom., 376; 23 C. W. N., 758; 21 Bom. L. R., 1148, approving of *Dayaram v. Gordhandas* (1906), 31 Bom., 73; 8 Bom. L. R., 885; *Bal-krishna v. Jankibai* (1919), 22 Bom. L. R., 289.

⁸ *Mohini Mohan Misser v. Gour-chandra Rai* (1920), 5 Pat. L. J., 397; [1921 Pat.], 105.

⁹ *Boidya Nath Adya v. Makhan Lal Adya* (1890), 17 Calc., 680; *Krishna Das Lala v. Hari Charn Banerjee* (1911), 15 C. W. N., 828.

¹⁰ *Rajkrishna Dey v. Bipin Behari Dey* (1912), 40 Calc., 245, at p. 249; *Mahabir Singh v. Beharilal* (1891), 13 All., 320; *Appa Rao v. Sobhanadri*

There is a difference of opinion as to whether in a partition suit the Partition suit, "value of the suit" means the value of the whole property which would become subject to partition or only the value of the share claimed by the plaintiff. The former view has been accepted in Bengal.¹

The latter view has been accepted in Bombay,² Madras,³ and Patna.⁴

Where the claim is only for the separation of the plaintiff's share from the rest of the property there is authority that the value of the plaintiff's share is the "value of the suit."⁵

The value of a suit for possession and mesne profits must be deter- Possession of land.
mined by the value of the land and of the profits.⁶

The value of a suit for a mere declaration as to property must be Declaration.
determined by the value of the property.⁷

As to a suit to determine the question whether property should have been attached and sold in execution of a decree, see *Dwarka Das v. Kameshar Prasad* (1894), 17 All., 69; *Moula Khan v. Gorikhan* (1890), 14 Bom., 627.

As to a suit for accounts, see *Khushalchand Mulchand v. Nagindas Accounts. Motichand* (1888), 12 Bom., 675.

A suit for redemption must be valued by the amount of the principal Redemption.
sum due.⁸ As to a suit for pre-emption, see *Chiragh Din v. Scrajdin* (1922), 3 Lahore, 886.

An error in the valuation does not exclude the jurisdiction Error in
of the Judge to entertain an appeal.⁹ valuation.

As to the refusal of a Court to entertain an appeal on the ground that sufficient Court-fee had not been paid in the lower Court, see *Rasik Behari Prasad Chowdhry v. Hirde Narain Chowdhry* (1922), 1 Pat., 471.

In some cases it is impossible for the Court to fix the valuation

Rao (1899), 24 Mad., 158. See, however, *Hamidunissa Bibi v. Gopal Chandra Malakar* (1897), 24 Calc., 661; 1 C. W. N., 556.

¹ *Boidya Nath Adya v. Makhan Lal Adya* (1890), 17 Calc., 680, following *Kirtychurn Mitter v. Aunath Nath Deb* (1882), 8 Calc., 757.

² *Motibai v. Haridas* (1896), 22 Bom., 315.

³ *Velu Goundan v. Kumaravelu Goundan* (1896), 20 Mad., 289.

⁴ *Dukhi Singh v. Harihar Shah* (1920), 5 Pat. L. J., 540; [1921 Pat.], 89.

⁵ *Wajih-ud-din v. Waliullah* (1902), 24 All. 881; *Chakrapani Asari v. Narasinga Rau* (1895), 19 Mad., 56.

⁶ *Mohini Mohan Das v. Satis Chandra Roy* (1890), 17 Calc., 704. As to

the case where the value of the land plus mesne profits exceeds the jurisdiction of the Court, see *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (1910), 43 Calc., 650; 15 C. W. N., 506.

⁷ *Shiv Ram v. Khurshed Ahmed* (1919), 1 Lahore L. J., 87; *Mohini Mohan Misser v. Gourchandra Rai* (1920), 5 Pat. L. J., 897; [1921 Pat.], 105; *Ganapati v. Chatu* (1889), 12 Mad., 228.

⁸ *Jallaldeen Marakayar v. Vijayawami* (1915), 39 Mad., 447; *Zamorin of Calicut v. Narayana* (1882), 5 Mad., 284.

⁹ See *Jallaldeen Marakayar v. Vijayawami* (1915), 39 Mad., 447, following *Vasudeva v. Madhava* (1898), 16 Mad., 826.

satisfactorily, *e.g.* in the case of a suit to set aside an adoption,¹ a suit for restitution of conjugal rights,² or a suit for accounts.³

A defendant appealing from a preliminary decree for accounts is not bound to accept the plaintiff's valuation in the plaint.⁴

Determination
of value of
certain suits by
High Court.

When the subject-matter of suits of any class other than suits for land, suits to enforce a right of preemption, and suits for specific performance of an award is such that, in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall for the purposes of the Court-fees Act, 1870,⁵ and of the Suits Valuation Act, 1887,⁶ and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.⁷

Decree for
sum exceeding
limits of
jurisdiction.

The jurisdiction of the Court is not ousted by the Court finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff,⁸ but the Court cannot even in that case give a decree for a sum exceeding the amount of its jurisdiction.⁹

Mesne
profits.

Mesne profits¹⁰ or interest accrued¹¹ due after the institution of the suit stand upon a different footing, but a Court having no jurisdiction to try a petition/suit cannot make a decree for mesne profits,¹² or any decree which is merely of a subsidiary character.

Objection on
appeal or
revision.

Section 11 of the Suits Valuation Act¹³ provides as follows:—

“(1) Notwithstanding anything in section 99 of the Code

¹ *Prahlād Chandra Das v. Dwarka Nath Ghose* (1910), 37 Calo., 860; 14 C. W. N., 999. See *Sheo Deni Ram v. Tulshi Ram* (1893), 15 All., 378.

² *Jan Mahomed Mandal v. Mashar Bibi* (1907), 34 Calo., 852; 11 C. W. N., 458; *Zair Husain Khan v. Khurshed Jan* (1906), 28 All., 545. Cf. *Mowla Newas v. Sajidunnissa Bibi* (1891), 18 Calo., 378.

³ *Golap Singh v. Indra Coomar Hasra* (1909), 13 C. W. N., 498.

⁴ *Kanhaiya Lal v. Seth Ram Sarup* (1922), 44 All., 542.

⁵ Act VII of 1870.

⁶ Act VII of 1887.

⁷ *Ibid.* s. 9.

⁸ *Madho Das v. Ramji Patak*

(1894), 16 All., 286.

⁹ *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (1910), 43 Calo., 650; 15 C. W. N., 506; *Golap Singh v. Indra Coomar Hasra* (1909), 13 C. W. N., 498.

¹⁰ *Panchuram Tekadar v. Kinoo Haldar* (1912), 40 Calo., 56; *Rameswar Mahton v. Dilu Mahton* (1894), 21 Calo., 550. See *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (1910), 15 C. W. N., 506.

¹¹ *Shamrav Pandoji v. Niloji Ramaji* (1885), 10 Bom., 200.

¹² *Nagamma v. Subba* (1887), 11 Mad., 197.

¹³ Act VII of 1887.

of Civil Procedure,¹ an objection that by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or lower appellate Court, which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto cannot be entertained by an Appellate Court unless—

- (a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or
- (b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.²

“(2) If the objection was taken in the manner mentioned in clause (a) of subsection (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that subsection and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

“(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

“(4) The provisions of this section with respect to an

¹ Now Act V of 1908.

² *Rachappa Subrao Jadhav v. Shidappa Venkatrao Jadhav* (1918), 46 I. A., 24; 43 Bom., 507; 24 C. W. N., 88; 21 Bom. L. R., 489; *Raghunath Charan Singh v. Shamo Koeri* (1908), 31 Calc., 344; *Hamidunnissa Bibi v. Gopal Chandra Malakar* (1897), 24 Calc., 661; 1 C. W. N., 556; *Dinesh Chunder Roy Chowdhury v. Sarna-*

moyi Debi (1896), 1 C. W. N., 186; *Satya Kinkar Sahana v. Shiba Prosad Singh* (1919), 4 Pat. L. J., 447; [1920 Pat.], 17; *Aklemannessa Bibi v. Mahomed Hatem* (1904), 81 Calc., 849; 8 C. W. N., 705; *Zair Husain Khan v. Khurshed Jan* (1906), 28 All., 545; *Krishnasami v. Kanakasabai* (1890), 14 Mad., 188; *Raman v. Secretary of State* (1900), 24 Mad., 427.

appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 115 of the Code of Civil Procedure¹ or other enactment for the time being in force."

Approximate valuation.

Where the plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively, and prays that the amount of his claim be ascertained in the suit, the amount found by the Court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of the appeal,² provided the plaintiff has been amended so as to include a prayer for the increased amount.³

When the plaintiff has accepted an offer to make good the deficiency in Court fees, the value of the suit must be taken as being in accordance with the fee actually paid.⁴

In a suit for accounts where the Munsif passed a decree for more than Rs. 5000,⁵ although the suit was valued within the pecuniary jurisdiction of the Munsif, it was held that the appeal lay to the District Court.⁶

Incidental relief.

A prayer for what is really only incidental relief does not affect the jurisdiction of the Appellate Court.⁷

Judicial Committee.

The Judicial Committee "will not interfere with any question of valuation unless it can be shown that some item has improperly been made the subject of valuation or excluded therefrom, or that there is some fundamental principle affecting the valuation which renders it unsound."⁸

A point as to valuation cannot be taken for the first time before the Judicial Committee.⁹

Extra-territorial jurisdiction.

The jurisdiction of Courts of Justice in British India is confined ordinarily to the limits of British India, but by "treaty, capitulation, agreement, grant, usage, sufferance and

¹ Now Act V of 1908.

² *Ibrahimji Issaji v. Bejanji Jamseji* (1895), 20 Bom., 265; *Ijjatulla Bhuyan v. Chandra Mohan Banerjee* (1907), 34 Calc., 954; 11 C. W. N., 1188, followed in *Tara Kanta Das Chowdhury v. Kali Prasad Das Ghorai* (1919), 23 C. W. N., 942; *Gulab Khan v. Abdul Wahab Khan* (1904), 81 Calc., 865; 8 C. W. N., 238. See, however, *Khushalchand Mulchand v. Nagindas Motichand* (1888), 12 Bom., 675. Cf. *Kannaya Chetti v. Venkata Narasayya* (1916), 40 Mad., 1; *Shet Kavasji v. Dinshaji* (1897), 22 Bom., 968.

³ See *Kalikamal Maitra v. Faslar*

Rahaman (1910), 15 C. W. N., 454.

⁴ *Raman Lalji Maharaj* (Goswami Sri) v. *Bohra Desraj* (1910), 32 All. 222.

⁵ See Act III of 1873, ss. 12, 13, post, p. 207.

⁶ *Kannaya Chetti v. Venkata Narasayya* (1916), 40 Mad., 1, differing from *Ijjatulla Bhuyyan v. Chandra Mohan Banerjee* (1907), 34 Calc., 954.

⁷ *Nitya Nand v. Bishan Lal* (1911), 33 All., 634.

⁸ *Charan Das v. Amir Khan* (1920), 25 C. W. N., 299, at p. 296.

⁹ *Ibid.*

other lawful means,"¹ the Crown or the Governor-General in Council can obtain jurisdiction in native States adjoining British India.²

This jurisdiction is confined to cases against British subjects.

By section 9 of the Foreign Jurisdiction Act, 1890,³ the Assignment of King in Council may confer on any Court in any British jurisdiction to British Courts. possession, or held under the authority of His Majesty, any jurisdiction, civil or criminal, original or appellate, which may lawfully by Order in Council be assigned to or conferred on any British Court in any foreign country.

¹ Recitals to 53, 54 Vict. c. 37.

India" (8rd edn.), pp. 388-392.

² See Ilbert's "Government of

³ 53, 54 Vict. c. 37.

PART II.

HIGH COURTS.

CHAPTER II.

STATUTES RELATING TO INDIAN HIGH COURTS.

Courts existing in 1861. WHEN the first Indian High Courts Act,¹ viz. that of 1861, was passed the existing Courts of Justice in British India consisted of—

(a) The Supreme Courts at Calcutta, Madras, and Bombay, whose jurisdiction was in the main limited to those three towns respectively.

“The jurisdiction of the Supreme Courts of Judicature in India may be stated shortly to have extended over the following classes :—

1. British subjects² throughout India, in all matters civil and criminal.
2. The inhabitants of Calcutta, Madras, and Bombay, within fixed limits, whether natives or others, in all matters civil and criminal.
3. Native subjects, servants of the East India Company, or of any British subject, for acts committed as such; with limitations in certain civil matters.
4. Native subjects in civil matters, for transactions by which they have bound themselves by bond to be amenable to the Supreme Courts.
5. All persons whatsoever for crimes maritime.”³

(b) The Courts of Sadr Dewanny Adawlut for the Presidencies of Lower Bengal, Madras, Bombay, and the North-

¹ 24, 25 Vict. c. 104.

Nataraja Iyer (1912), 86 Mad., 72, at p. 79.

² Namely, what are now called “European British subjects.” *In re*

³ *Morley's Digest*, I. xxi.

West Provinces. Such Courts dealt with appeals in civil cases from the provincial Courts;

(c) The Courts of Sadr Nizamut Adawlut for the Presidencies of Bengal and the North-Western Provinces, and the Court of Sadr Foujdaree Adawlut for the Presidencies of Bombay and Madras. These Courts dealt with appeals in criminal cases from the provincial Courts;

(d) Provincial Civil and Criminal Courts;

(e) Courts of Small Causes in the Presidency towns¹ and in the provinces.²

(f) Courts of magistrates in the Presidency towns.³

The Indian High Courts Act, 1861,⁴ gave to the Crown ^{High Courts Act, 1861.} authority to establish High Courts at Calcutta, Madras, and Bombay,⁵ and at one other place.⁶ It provided for the constitution of such High Courts,⁷ for the tenure of office,⁸ precedence,⁹ and salaries¹⁰ of the Judges, and for the vacancy of the office of Judge.¹¹ It abolished the Supreme Courts and the Sadr Courts,¹² and it made provisions for the jurisdiction and powers of the High Courts,¹³ and for the superintendence of the subordinate Courts.¹⁴

The High Courts Act, 1865,¹⁵ gave power to the Governor-General in Council to alter the local limits of the jurisdiction of the High Courts, subject to disallowance of the order by the Crown. ^{High Courts Act, 1865.}

The High Courts Act, 1911,¹⁶ increased the maximum ^{High Courts Act, 1911.} number of Judges of the High Courts to twenty,¹⁷ gave His Majesty power to establish additional High Courts,¹⁸ and gave the Governor-General in Council power to appoint additional Judges for periods of two years.¹⁹

The above High Courts Acts were repealed by the Government of India Act, 1915.²⁰

¹ Originally established by Act IX of 1850.

² Originally established by Act XLII of 1860.

³ Originally established by Act XIII. of 1856.

⁴ 24, 25 Vict. c. 104.

⁵ S. 1.

⁶ S. 16. Under this provision a High Court was established for the North-Western Provinces. It is now called the High Court at Allahabad.

⁷ S. 2.

⁸ S. 4.

⁹ S. 5.

¹⁰ S. 6.

¹¹ S. 7.

¹² S. 8.

¹³ Ss. 9-14.

¹⁴ S. 15.

¹⁵ 28, 29 Vict. c. 15.

¹⁶ 1, 2 Geo. V. c. 18.

¹⁷ *Ibid.* s. 1.

¹⁸ *Ibid.* s. 2.

¹⁹ *Ibid.* s. 3.

²⁰ 5, 6 Geo. V. c. 61.

Government of
India Act,
1915.

Constitution of
High Courts.

The following are the provisions of the Government of India Act, 1915,¹ applicable to Indian High Courts.

“Section 101.—(1) The High Courts referred to in this Act are the High Courts of Judicature for the time being established in British India² by Letters-Patent.

“(2) Each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint:³ Provided as follows:—

(i) the Governor-General in Council may appoint persons to act as additional Judges of any High Court, for such period, not exceeding two years, as may be required; and the Judges so appointed shall, whilst so acting, have all the powers of a Judge of the High Court appointed by His Majesty under this Act;

(ii) the maximum number of Judges of a High Court, including the Chief Justice and additional Judges, shall be twenty.⁴

“(3) A Judge of a High Court must be—

(a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; or

(c) a person having held judicial office, not inferior to that of a subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or

(d) a person having been a pleader of a High Court for a period of not less than ten years.⁵

“(4) Provided that not less than one-third of the Judges of a High Court, including the Chief Justice but excluding

¹ 5, 6 Geo. V. c. 61.

² By s. 18, cl. 4, of 52, 53 Vict. c. 63 (Interpretation), “British India” means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India.

Cf. General Clauses Act, 1897 (Act X of 1897), s. 3 (7).

³ The omission to fill up a vacancy does not affect the powers of the remaining Judges: *Lal Singh v. Ghansham Singh* (1887), 9 All., 625.

⁴ Cf. the Indian High Courts Act, 1911 (1, 2 Geo. V. c. 18), s. 1.

⁵ Cf. the Indian High Courts Act, 1861 (24, 25 Vict. c. 104), s. 2.

additional Judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.¹

"(5) The High Court for the North-Western Provinces may be styled the High Court of Judicature at Allahabad, and the High Court at Fort William in Bengal is in this Act referred to as the High Court at Calcutta.

"Section 102.—(1) Every Judge of a High Court shall hold his office during His Majesty's pleasure.²

Tenure of office of Judges of High Courts.

"(2) Any such Judge may resign his office, in the case of the High Court at Calcutta, to the Governor-General in Council, and in other cases to the Local Government.

"Section 103.—(1) The Chief Justice of a High Court shall have rank and precedence before the other Judges of the same Court.

Precedence of Judges of High Courts.

"All the other Judges of a High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.³

"Section 104.—(1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and other Judges of the several High Courts, and may alter them, but any such alteration shall not affect the salary of any Judge appointed before the date thereof.

Salaries, etc., of Judges of High Courts.

"(2) The remuneration fixed for a Judge under this section shall commence on his taking upon himself the execution of his office, and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

"(3) If a Judge of a High Court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal representatives, out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

"(4) If a Judge of a High Court dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his

¹ Cf. the Indian High Courts Act, 1861 (24, 25 Vict. c. 104), s. 2.

² *Ibid.* s. 4.

³ *Ibid.* s. 5.

legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary."¹

As at present fixed, the annual salaries of Judges are as follows :—

Chief Justice of Bengal	Rs. 6,000 per month.
Chief Justices of Madras, Bombay } and North-Western Provinces }	.. Rs. 5,000 per month.
Other Judges Rs. 4,000 per month.

Provision for
vacancy in the
office of Chief
Justice or other
Judge.

"Section 105.—(1) On the occurrence of a vacancy in the office of Chief Justice of a High Court, and during any absence of such a Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the Local Government in other cases, shall appoint one of the other Judges of the same High Court to perform the duties of Chief Justice of the Court, until some person has been appointed by His Majesty to the office of Chief Justice of the Court, and has entered on the discharge of the duties of that office, or until the Chief Justice has returned from his absence, as the case requires.

"(2) On the occurrence of a vacancy in the office of any other Judge of a High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the Local Government in other cases, may appoint a person with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the Court; and the person so appointed may sit and perform the duties of a Judge of the Court, until some person has been appointed by His Majesty to the office of Judge of the Court, and has entered on the discharge of the duties of the office, or until the absent Judge has returned from his absence, or until the Governor-General in Council or the Local Government, as the case may be, sees cause to cancel the appointment of the acting Judge.²

Jurisdiction of
High Courts.

"Section 106.—(1) The several High Courts are Courts of record and have such jurisdiction, original and appellate, including Admiralty jurisdiction in respect of offences com-

¹ The Governor-General in Legislative Council may repeal or alter this provision as to the commencement and exclusiveness of official remuneration of judges and payment

to their representatives: 5, 6 Geo. V. c. 61, s. 131 (3), and Sch. V.

² *Balwant Singh (Rao) v. Kishori (Rani)* (1898), 25 I. A., 54; 20 All., 267; 2 C. W. N., 273.

mitted on the high seas,¹ and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks, and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in them by Letters-Patent, and subject to the provisions of any such Letters-Patent, all such jurisdiction, powers and authority as are vested in those Courts respectively at the commencement of this Act."

- This section may be repealed or altered by the Governor-General in Legislative Council.²

By a similar provision in section 9 of the Indian High Courts Act, 1861, the authority then vested in the Supreme Courts was vested in the High Courts.

The Supreme Courts by virtue of the provisions in their charters, giving them such jurisdiction and authority as the Justices of the King's Bench had by common law in England,³ issued prerogative writs, being processes issued upon extraordinary occasions on proper cause shown. The High Courts of Bengal, Madras, and Bombay succeeded to the powers of the Supreme Courts at Calcutta, Madras, and Bombay respectively, but as appears below they cannot now be said to be able to issue such writs in all the cases, which, when the Supreme Courts existed, could only be dealt with by such writs.

The prerogative writs were as follows:—

(a) Writs of *procedendo*, the object of which was to compel inferior Courts to proceed to give judgment. The ample powers of superintendence,⁴ revision,⁵ and transfer⁶ now possessed by the High Courts would seem to suffice for all the cases to which those writs were applicable.

(b) Writs of *mandamus*. These writs were abolished by section 50 *Mandamus*, of Act I of 1877.

Section 45 of the Specific Relief Act, 1877,⁷ provides the following substitute for writs of *mandamus*.

"Any of the High Courts of Judicature at Fort William, Madras, Bombay, and Rangoon⁸ may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation⁹ or inferior Court of Judicature: Enforcement of public duties.

¹ This Act repealed 33 Geo. III. c. 52, s. 156.

² 5, 6 Geo. V. c. 61, s. 131 (3), Sch. V.

³ Charter of Calcutta Supreme Court, clause 4; charter of Madras Supreme Court, clause 8; charter of Bombay Supreme Court, clause 10.

⁴ *Post*, p. 27.

⁵ *Post*, chap. xxix.

⁶ *Post*, p. 27.

⁷ Act I of 1877.

⁸ Bur. Act XI of 1922, Sch. I.

⁹ For instance a municipal corporation or a statutory committee (*Bholaram Chowdhry v. Corporation of Calcutta* (1909), 86 Calc., 671; 13 C. W. N., 740), or a statutory officer thereof (*In the matter of Romesh Chunder Sen* (1912), 39 Calc., 598; 16 C. W. N., 472).

Provided—

- (a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;
- (b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent¹ on such person or Court in his or its public character, or on such corporation in its corporate character;²
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;
- (d) that the applicant has no other specific and adequate legal remedy;³ and
- (e) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorise any High Court—

- (f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Governor of Bengal;
- (g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown; or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force.

The principles applicable to a writ of *mandamus* should generally be followed in the case of an application for an order under this section.⁴

(c) Writs of prohibition, the object of which was to prohibit inferior Courts proceeding without jurisdiction. Writs of prohibition have been unheard of in modern times. The powers of appeal and revision seem now to afford an adequate remedy.

(d) Writs of *quo warranto*, which dealt with usurpation of office, franchise or liberty. They are obsolete in England⁵ and are unheard of and seem to be unnecessary in India.⁶

¹ See *In the matter of the Excess Profits Duty Act* (1920), 45 Bom., 881.

² The Court cannot interfere when there is a discretion which has been not unreasonably exercised: *Ismail Haji v. Municipal Commissioner of Bombay* (1908), 28 Bom., 268; 5 Bom. L. R., 1001. For instances of the omission to perform statutory duties at municipal elections, see *In the matter of Sarafally Mamooji* (1910), 34 Bom., 659; 12 Bom. L. R., 787; *In the matter of Romesh Chunder Sen* (1912), 89 Cal., 598; 16 C. W. N., 472; *In re Surendra Chandra Ghose* (1918), 45 Cal., 950; *Mami Lal Nahar*

(*Rai Bahadur*) v. *Mowdad Rahaman* (1918), 22 C. W. N., 951.

³ *Kesho Prasad Singh v. Board of Revenue* (1911), 88 Cal., 558; 15 C. W. N., 508; *Ex parte Gilbert* (1892), 16 Bom., 898; *In the matter of Mutty Lal Ghose* (1892), 19 Cal., 192.

⁴ *In the matter of Provas Chandra Roy* (1913), 40 Cal., 588.

⁵ Stevens' Blackstone (16th edn.), vol. iii, p. 705.

⁶ See, however, *In the matter of Corkhill* (1895), 22 Cal., 717. SALM, J., described that case as an application for a writ of *quo warranto*, but the cases to which he refers were dealt

Exemptions
from such
power.

Prohibition.

Quo Warranto.

(e) Writs of *habeas corpus*. The object of these writs was to effect the release of persons improperly detained in public or private custody. *Habeas Corpus*.

Section 491 of the Criminal Procedure Code¹ deals with all cases which can occur in the towns of Calcutta, Madras, and Bombay, and section 456 of the same Code deals with the detention of European British subjects. Certain provisions are made for the custody of minors by the Guardians and Wards Act, 1890.²

The power of the High Courts to issue a writ of *habeas corpus* beyond the Presidency towns was abolished by section 82 of Act X of 1872, the repeal of which Act has not revived the power which was taken away by it.³

As to the power to issue such writs before the passing of that Act, see *In the matter of Ameer Khan* (1870), 6 Ben. L. R., 392; s.c. on appeal (1870), *ibid.* 459.

The question as to whether such writs now run has been raised in two recent cases, but not decided.⁴

As to the issue of a writ of *habeas corpus* to bring up prisoners to give evidence in India in indictments and information before the Court of King's Bench, see 1 Wm. IV. c. 22, s. 6.

(f) Writs of *certiorari*, the object of which is to move into the *Certiorari* superior Courts civil and criminal cases pending before inferior Courts.

The object of writs of *certiorari* is almost entirely supplied by the powers of appeal, revision and transfer both in civil and criminal cases which are given to the High Courts. In matters concerning the Revenue the High Courts cannot interfere.⁵

The High Courts at Calcutta, Bombay, and Madras have the same power to issue writs of *certiorari* as was possessed by the Supreme Courts of which they are respectively successors, but as a writ of *certiorari* will not issue where there is another sufficient remedy, such writ cannot issue in a case to which section 115 of the Civil Procedure Code,⁶ section 236 of the Code of Criminal Procedure,⁷ or section 107 of the Government of India Act, 1915,⁸ is applicable.⁹

A High Court can only issue a writ of *certiorari* or exercise revisional jurisdiction in respect of civil and criminal Courts, including Courts specially instituted, which are subject to its superintendence.

It has no power to interfere with the acts of an executive officer in the performance of administrative duties confided to him by the law.

Whether an act is judicial or not depends on the nature of the powers conferred by the legislature, the character of the act sought to be

with under s. 45 of the Specific Relief Act, 1877.

¹ Act V of 1898.

² Act VIII of 1890.

³ See Act X of 1897, s. 6 (a).

⁴ *Parmeshwar Ahir v. the Crown*, 8 Pat. L. J., 537; [1918 Pat.], 97; *Tops v. Emperor* (1918), 46 Calc., 81, 52.

⁵ *Post*, pp. 26, 27.

⁶ *Post*, chap. xxix.

⁷ Act V of 1898.

⁸ *Post*, p. 27.

⁹ *Besant v. Advocate-General of Madras* (1919), 46 I. A., 176; 48 Mad., 146; 23 C. W. N., 986; 21 Bom. L. R. 867; s.c. in Court below, *In re Besant* (1916), 39 Mad., 1164; *In re Nataraja Iyer* (1912), 36 Mad., 72.

quashed, and the nature and extent of the discretion vested with the authority and other similar considerations.¹

The question as to the power of the High Court to issue writs of *certiorari* came before a Division Bench of the Madras High Court in *In re Nataraja Iyer* (1912), 86 Mad., 72, in which case it was held that a High Court had power, at any rate within the limits of its ordinary original civil jurisdiction, to issue a writ of *certiorari* on a Divisional officer hearing appeals under the Income Tax Act (II. of 1886).

The learned Judges differed as to whether the writ would run outside such limits.

The question was considered by the Judicial Committee in *Besant v. Advocate-General of Madras*.² In that case their Lordships say—³

“It would seem that at any rate the three High Courts of Calcutta, Madras, and Bombay possessed the power of issuing this writ (see *Re the Justices of the Supreme Court of Judicature at Bombay* (1829), 1 Knapp, pp. 1, 49, 51, 55; and *Nundo Lal Bose v. The Corporation for the Town of Calcutta*, 11 Calc., 275). Whether any of the other Courts which are by definition High Courts for the purposes of this Act have the power to issue writs of *certiorari* is another question.

“Supposing that this power once existed, has it been taken away by the two codes of procedure? No doubt these codes provide for most cases a much more convenient remedy. But their Lordships are not disposed to think that the provisions of section 435 of the Criminal Procedure Code and section 115 of the Civil Procedure Code of 1908 are exhaustive. Their Lordships can imagine cases, though rare ones, which may not fall under either of these sections. For such cases their Lordships do not think that the powers of the High Courts which have inherited the ordinary or extraordinary jurisdiction of the Supreme Court, to issue writs of *certiorari*, can be said to have been taken away.”

A writ of *certiorari* was recognised by section 38 of the Bengal Salt Act, 1864,⁴ which barred its application to proceedings under that Act.

“Error.”

(g) Writs in Error, which are, it is submitted, obsolete, full power being otherwise given for dealing with any error committed by the subordinate Courts.

Revenue.

“Section 106.—(2) The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.”

This last provision is a reproduction of 21 Geo. III. c. 70, s. 8. See *In the matter of Audhur Chundra Shaw* (1873), 11 B. L. R., 250;

¹ *In re Besant* (1916), 39 Mad., 1164; s.c. on appeal, *Besant v. Advocate-General of Madras* (1919), 46 I. A., 176; 43 Mad., 146; 23 C. W. N., 986; 21 Bom. L. R., 867.

² (1919), 46 I. A., 176; 43 Mad.,

146; 28 C. W. N., 986; 21 Bom. L. R., 867.

³ 46 I. A., at p. 190; 43 Mad., 146, at p. 159; 23 C. W. N., at p. 994; 21 Bom. L. R., at p. 878.

⁴ Ben. Act VII of 1864.

Collector of Sea Customs v. Chithambaram (1876), 1 Mad., 89; Madras City Land Revenue Act, 1851 (XII. of 1851), ss. 16, 17.

"Section 107. Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction,¹ and may do any of the following things, that is to say,—

Powers of High Court with respect to subordinate Courts.

(a) call for returns;

(b) direct the transfer² of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction;³

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;

(d) prescribe forms in which books, entries, and accounts shall be kept by the officers of such Courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts:

Provided that such rules, forms, and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and in other cases of the Local Government."⁴

An order made by a Collector under section 11 of the Land Acquisition Act, 1894, is not subject to revision by the High Court,⁵ but an order made by him under section 18 of the Act is subject to revision.⁶

Although the power of superintendence given to the High Courts by this section is in the main given for administrative purposes, it is not merely administrative, or ministerial, but is also judicial,⁷ and a High

¹ See *Sheonandan Prasad Singh v. King Emperor* (1918), 3 Pat. L. J., 581; [1919 Pat.], 1.

² This has nothing to do with the power of removal to be found in the Letters-Patent (*post*, p. 61); *Municipal Officer, Aden v. Ismail Hajee Allana* (1905), 33 I. A., 38; 30 Bom., 246; 10 C. W. N., 185; 8 Bom. L. R., 4.

³ See *Maharajah of Jeypore v. Papayamma* (1900), 23 Mad., 329.

⁴ This section is similar to s. 15 of the Indian High Courts Act, 1861 (24, 25 Vict. c. 104).

⁵ See *Eera v. Secretary of State* (1905), 32 I. A., 93; 32 Calc., 605;

9 C. W. N., 454; 7 Bom. L. R., 422; *British India Steam Navigation Co. v. Secretary of State* (1910), 38 Calc., 230; 15 C. W. N., 87; *Krishna Das v. Collector of Pabna* (1912), 16 C. L. J., 165; *Saraswati Pattack v. Land Acquisition Deputy Collector of Champaran* (1917), 2 Pat. L. J., 204.

⁶ *Parameswara v. Land Acquisition Collector* (1918), 42 Mad., 231.

⁷ See *Raghunath Sahay (Munshi) v. Hasari Sahu*, [1917 Pat.], 105; *Bijee Koor (Mussamat) v. Damodur Dass (Rai)* (1878), 5 N. W. P., 55; *Muhammad Suleman Khan v. Fatima* (1886), 9 All., 104; *Tej Ram v. Har-sukh* (1875), 1 All., 101.

Court has power thereunder to rectify the mistakes made by subordinate Courts.

The power of superintendence is independent of the question whether an appeal lies in the particular case.¹

Under this section the High Court can revise an order made by the Controller under the Calcutta Rent Act, 1920, *post*, p. 858.

Revenue
Courts.

Where the superintendence over a Revenue Officer in a particular matter is vested in the Board of Revenue, a High Court has no revisional power.²

Where an appeal lies from the Revenue Officer to the High Court, the High Court can under this section revise his proceedings.³

Legal Practi-
tioners Act.

The High Court may interfere with proceedings under the Legal Practitioners Act, 1879 (XVIII of 1879), if the Judge has grossly abused his powers, or has acted in excess of his jurisdiction, or done something without jurisdiction.⁴

As to the question whether a Bench of a High Court can deal with an order made under section 86 of that Act, see *In re Kedar Nath* (1908), 31 All., 59.

In addition to the powers of revision given to it by this section, the High Courts have powers of revision in civil cases under section 115 of the Code of Civil Procedure (Act V of 1908).⁵

Special powers are also given to them to revise judgments of Small Cause Courts.⁶

Revision.

As to writs of *certiorari*, see *ante*, pp. 25, 26. Section 107 of the Government of India Act, 1915, gives to the High Court large powers over the inferior Courts.⁷ The revisional powers given by section 115 of the Procedure Code⁸ are limited, but the view taken by the Courts as to the cases in which the High Courts should exercise their powers prevents any substantial distinction being made between the powers given by the two enactments.

¹ *Uma Charan Mondol v. Midnapur Zemindary Company* (1914), 18 C. W. N., 782; *Sheonandan Prasad Singh v. King Emperor* (1918), 3 Pat. L. J., 581; [1919 Pat.], 1; *In the matter of Abdool Ali (Syud)* (1875), 15 B. L. R., 197.

² *Umacharan Mondol v. Midnapur Zemindary Company* (1914), 18 C. W. N., 782.

³ As to the Chota Nagpur Tenancy Act (Ben. Act VI of 1908), see *Kartik Chandra Ojha v. Gora Chand Mahto* (1913), 40 Cal., 518. As to the Sonthal Parganas, see *Darbari Panjara v. Bhoti Roy* (1914), 41 Cal., 915; 18 C. W. N., 575; *Sardhari Sah v. Hukum Chand Sah* (1914), 41 Cal., 876; 18 C. W. N., 662. Cf. *In the matter of Gobind Koomar Chowdry* (1867), B. L. R. F. B. R., 714; 7 W. R. O. R., 520; *Nilmoni Singh*

Deo Bahadur (Rajah) v. Taranath Mookerjee (1882), 9 I. A., 174; 9 Cal., 295.

⁴ *Janak Kishore* [1917 Pat.], 60; *In re Siddeshwar Boral* (1899), 4 C. W. N., 36.

⁵ *Post*, chap. xxix.

⁶ See Act XV of 1882, s. 6, *post*, p. 255, and Act IX of 1887, ss. 25, 28, *post*, pp. 275, 276.

⁷ *Brindaban Chander Choudh v. Goru' Chandra Roy*, [1920 Pat.], 56. Cf. *Bhyrub Chunder Chunder v. Shama Soonderes Debea* (1866), 6 W. R., Act X. R., 68, at p. 69; *Ajonnissa Bibi v. Surja Kant Acharji* (1869), 2 B. L. R. A. C., 181; 11 W. R. O. R., 56; *Bhagwan Ramanuj Das (Mohunt) v. Khettermoni Dass* (1896), 1 C. W. N., 617.

⁸ Act V of 1908, *post*, chap. xxix.

The revision section of the Civil Procedure Code might properly be accepted as indicating the extent to which the Court should ordinarily interfere in civil cases with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final;¹ but the law, having left the power contained in section 107 unlimited, it is not desirable to limit it by any hard-and-fast rule.²

As to the civil cases in which the High Courts interfere in revision, see *post*, chapter xxix.

In cases in which the High Courts cannot interfere under the revisional provisions contained in the Code of Civil Procedure,³ ordinarily they only interfere where the Courts below have declined to exercise the jurisdiction vested in them, or have exercised a jurisdiction which they do not possess;⁴ but it has been held that where there is anything in the nature of a denial of the right of fair trial a High Court can interfere under section 107.⁵

The revisional powers of the High Courts are discretionary, and will only be exercised when injustice has manifestly been done by a subordinate Court and when there is no other remedy.⁶

A High Court will not interfere where there has been laches or unexplained delay.⁷

In the exercise of its powers of superintendence under this section a High Court is not restricted, as it is under the revisional power given to it by section 115 of the Civil Procedure Code,⁸ to cases where no appeal lies;⁹ but it was held that where an appeal to the High Court is expressly excluded, the Court would not interfere under the provisions of the High Courts Act, 1861, corresponding with section 107 of the Government of India Act, 1915, except where the lower Court has exercised a jurisdiction which it did not possess or has declined to exercise a jurisdiction which it possessed.¹⁰

A High Court in British India has power to punish contempts of its Court.

¹ *Muhammad Suleman Khan v. Fatima* (1886), 9 All. 104, at p. 107. See *Abdullah v. Salaru* (1895), 18 All., 4.

² *Bhagwan Ramanuj Das (Mohunt) v. Khettermoni Dassi* (1896), 1 C. W. N., 617. For a recent case in which the Court gave effect to what are said to be the wider powers of s. 15 of the Indian High Courts Act, 1861, corresponding with s. 107 of the Government of India Act, 1915, see *Sardhari Sah v. Hukum Chand Sah* (1914), 41 Cal., 876.

³ *Post*, chap. xxix.

⁴ See *In the matter of Lukhykant Bose* (1875), 1 Cal., 180; 24 W. R. C. R., 440; *Pratap Singh (Malik) v. Khan Mahomed* (1909), 86 Cal., 994; 13 C. W. N., 1222; *Tej Ram v.*

Harsukh (1875), 1 All., 101.

⁵ *Braja Bhushan Trigunait v. Sris-chandra Tewari* (1918), 4 Pat. L. J., 20, at p. 28.

⁶ See *Swinhoe v. Hera Lal Sirkar* (1894), 2 C. W. N., 727; *Madhub Chunder Giree v. Sham Chand Giree* (1877), 8 Cal., 243; *In the matter of Miller* (1869), 4 B. L. R. A. C., 72, note; 12 W. R. C. R., 103.

⁷ *Radha Mohun Roy v. Raj Chunder Shah* (1874), 22 W. R. C. R., 522.

⁸ *Post*, chap. xxix.

⁹ *Abdulla v. Salaru* (1895), 18 All., 4, at p. 7.

¹⁰ See *Karim Sheikh v. Mukhoda Soondery Dasse* (1875), 15 B. L. R., 111; 23 W. R. C. R., 268; *In the matter of Lukhykant Bose* (1875), 1 Cal., 180; 24 W. R. C. R., 440.

own authority to the same extent, and in the same events as such power is possessed by King's Bench Division in England ;¹ but it has no power to punish contempts of inferior Courts, even when they are subject to its superintendence.²

Exercise of jurisdiction by single Judges or division Courts.

"Section 108.—(1) Each High Court may by its own rules provide as it thinks fit for the exercise by one or more Judges, or by division Courts constituted by two or more Judges, of the High Court, of the original and appellate³ jurisdiction vested in the Court."⁴

A division Court must consist of at least two Judges,⁵ so a single Judge in Bengal cannot refer a case to a full bench.⁶

"(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several division Courts."

The first paragraph of this section is subject to repeal or alteration by the Indian Legislature.⁷

Power for Governor-General in Council to alter local limits of jurisdiction of High Courts.

"Section 109.—(1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High Courts, and authorise any High Court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the High Court was established,⁸ and also to exercise any such jurisdiction in respect of any British⁹ subject for the time being within any part of India outside British India.

"(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

¹ *Surendranath Banerjee v. Chief Justice, etc., of Bengal* (1888), 10 I. A., 171; 10 Cal., 109.

² *Emperor v. Balkrishna* (1921), 24 Bom. L. R., 16; *Legal Remembrancer v. Matilal Ghose* (1918), 41 Cal., 173; 17 C. W. N., 1258.

³ This includes revisional jurisdiction: *Queen v. Nyn Singh* (1870), 2 N. W. P., 117.

⁴ Cf. *Narayan Vithal Samant v. Jankibai* (1915), 39 Bom., 604; 17 Bom. L. R., 655; *Chaitanna Maitee v. Halodhur Maitee* (1903), 7 C.

W. N., 547.

⁵ *Raghubar Singh v. Jethu Malton*, [1922 Pat.], 88; (1922), 1 Pat., 384; *Nabu Mondul v. Cholim Mullik* (1898), 25 Cal., 896.

⁶ *Nabu Mondul v. Cholim Mullik* (1898), 25 Cal., 896.

⁷ 5, 6 Geo. V. c. 61, s. 181 (3), as amended by 9, 10 Geo. V. c. 101, s. 2.

⁸ *Baleshwar Bhagarti v. Bhagirathi Dass* (1908), 35 Cal., 701; 12 C. W. N., 657.

⁹ 6, 7 Geo. V. c. 87, Sch. I.

"(8) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and annul the order as from the day on which the Governor-General notifies that he has received intimation of the disallowance, but no act done by any High Court before such notification shall be deemed invalid by reason only of such disallowance."

• The Indian Legislature can remove territory from the jurisdiction of a High Court.¹

"Section 110.—(1)² The Governor-General, each Governor, Lieutenant-Governor, and a minister appointed under the Government of India Act of 1919, and Chief Commissioner and each of the members of the Executive Council of the Governor-General or of a Governor or Lieutenant-Governor, shall not—

Exemption from jurisdiction of High Court.

- (a) be subject to the original jurisdiction of any High Court by reason of anything counselled, ordered or done by any of them in his public capacity only; nor
- (b) be liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction; nor
- (c) be subject to the original criminal jurisdiction of any High Court in respect of any offence not being treason or felony.³

"(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the Chief Justices and other Judges of the several High Courts."

These provisions were taken from 13 Geo. III. c. 63, ss. 15, 17; 21 Geo. III. c. 70, s. 1; and 37 Geo. III. c. 142, s. 11, which have been repealed by the Government of India Act, 1915 (5, 6 Geo. V. c. 61), s. 180.

¹ *Queen v. Burah* (1878), 5 I. A., 178; 4 Cal., 172; 3 C. L. R., 197.

² 6, 7 Geo. V. c. 87, Sch. I.; 9, 10 Geo. V. c. 101, Sch. I.

³ The expression "treason" and "felony" are not known to the Indian criminal law. "Treason" would apparently include only the offences described in sections 121 to 123 of the Indian Penal Code (Act XLV of 1860). The expression "felony" originally

meant those offences which involved forfeiture of property "till by long use we began to signify by the term of felony the actual crime committed, and not the penal consequence" (Kerr's Blackstone, IV., 96). In this section the expression might be taken to mean all such crimes as would, if they had been committed in England, be considered to be felonies.

The provisions of this section are liable to repeal or alteration by the Governor-General in Legislative Council.¹

Written order
by Governor-
General
general justifi-
cation for act
in any Court in
India.

"Section 111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the Governor-General, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent Court in England."

This provision is taken from 21 Geo. III. c. 70, ss. 2, 3, 4, which have been repealed by the Government of India Act, 1915 (5, 6 Geo. V. c. 61), s. 180. It may be repealed or altered by the Indian Legislature.²

Law to be ad-
ministered in
cases of inher-
itance and
succession.

"Section 112. The High Courts at Calcutta, Madras, and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras, or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject."

This section is liable to repeal or alteration by the Governor-General in Legislative Council.³

This section contains provisions which are to be found with regard to the Supreme Court of Calcutta in 21 Geo. III. c. 70, s. 17, with regard to the Supreme Court of Madras in 37 Geo. III. c. 142, s. 18, read with 39, 40 Geo. III. c. 79, s. 5, and with regard to the Supreme Court of Bombay in 37 Geo. III. c. 142, s. 18, read with 4 Geo. IV. c. 71, s. 9. These enactments were all repealed by the Government of India Act, 1915 (5, 6 Geo. V. c. 61), s. 180.

Contracts.

So far as it goes the Indian Contract Act⁴ has superseded the Hindu⁵ and Mahomedan laws of contracts; but it may sometimes be necessary to refer to those laws as to matters of contract or dealing. For instance, the Hindu law of gifts is to some extent still applied to gifts by Hindus;

¹ 5, 6 Geo. V. c. 61, s. 180.

² 5, 6 Geo. V. c. 61, s. 131 (3),
as amended by 9, 10 Geo. V. c. 101,
Sch. III.

³ 5, 6 Geo. V. c. 61, s. 131 (3),

Sch. V.

⁴ IX of 1872.

⁵ *Madhub Chunder Poramanick v. Rajcoomar Doss* (1874), 14 B. L. R., 76; 22 W. R. C. R., 370.

and the law of *damdupat*, by which no greater arrear of interest can be recovered at any one time than what will amount to the principal sum, is applied in some cases.¹

The Mahomedan law of gifts is also applied, and except in the Madras Presidency the Mahomedan law of pre-emption is applied. In the Punjab and Oudh the Legislature has dealt with the law of pre-emption.

"Section 113. His Majesty may, if he sees fit, by Letters-Patent, establish a High Court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another High Court, and confer on any High Court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any High Court existing at the commencement of this Act; and, where a High Court is so established in any area included within the limits of the local jurisdiction of another High Court, His Majesty may, by Letters-Patent, alter those limits, and make such incidental, consequential, and supplemental provisions as may appear to be necessary by reason of the alteration."²

Power to establish additional High Courts.

By virtue of this power High Courts have been established at Patna,³ Lahore,⁴ and Rangoon.⁵

"Section 114.—(1) His Majesty may, by warrant under his Royal Sign Manual, appoint an Advocate-General for each of the Presidencies of Bengal, Madras, and Bombay.

Appointment and powers of Advocate-General.

"(2) The Advocate-General for each of these Presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England."

As to the power of the Advocate-General to exhibit informations in civil matters, see *Secretary of State v. Bombay Landing and Shipping Company* (1868), 5 Bom. H. C. O. C. J., 23, at pp. 41, 42.

This provision as to the power of an Advocate-General may be repealed or altered by the Indian Legislature.⁶

¹ See Trevelyan's "Hindu Law" (2nd edn.), pp. 8, 9.

² This power was first given by the Indian High Courts Act, 1911 (1, 2 Geo. V. c. 18, s. 2), *ante*, p. 19.

³ *Post*, chap. v.

⁴ *Post*, chap. vi.

⁵ *Post*, chap. vii.

⁶ Government of India Act, 1915 (5, 6 Geo. V. c. 61), s. 131(8), Sch. V, as amended by 9, 10 Geo. V. c. 101, Sch. II.

CHAPTER III.

LETTERS-PATENT OF THE HIGH COURTS AT CALCUTTA,¹ MADRAS, AND BOMBAY.

Letters-Patent of 1862. IN pursuance of the authority given by section 1 of the Indian High Courts Act, 1861,² Letters-Patent were issued in 1862 establishing High Courts at Fort William in Bengal,³ Madras, and Bombay.

Letters-Patent of 1865. These Letters-Patent were revoked by new Letters-Patent issued to those Courts in 1865.

The Letters-Patent issued to the above High Courts were in similar terms. Where there is any difference of phraseology between those granted to the High Courts of Madras and Bombay and those granted to the High Court of Bengal, the differences are hereinafter noted.

The Letters-Patent granted in 1865 to the High Court of Bengal, after reciting, amongst other things, the Indian High Courts Acts, 1861⁴ and 1865,⁵ and after revoking the Letters-Patent of 1862, proceeded as follows:—

“Clause 2. And We do by these presents grant, direct, and ordain that, notwithstanding the revocation of the said Letters-Patent of the [fourteenth of May]⁶ one thousand eight hundred and sixty-two, the High Court of Judicature, called the High Court of Judicature at [Fort William in Bengal]⁷ shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature [at Fort William in Bengal]⁸ for the [Bengal Division of the Presidency of Fort William] aforesaid, and that the said Court shall be

¹ 5, 6 Geo. V. c. 61, s. 101 (5).

² 24, 25 Vict. c. 104, *ante*, p. 19.

³ Now called the High Court at Calcutta: 5, 6 Geo. V. c. 61, s. 101 (5).

⁴ *Ante*, p. 19.

⁵ *Ante*, p. 19.

⁶ For Madras and Bombay: “26th

of June.”

⁷ For Madras: “Madras.” For Bombay: “Bombay.”

⁸ For Madras: “Presidency of Madras.” For Bombay: “Presidency of Bombay.”

and continue a Court of Record, . . .¹ and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters-Patent shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority."

The High Court of Bombay has not and is deemed never to have had Sindh jurisdiction over the Province of Sindh.²

The establishment of a High Court at Patna gave to that Court jurisdiction over a portion of the territory which had theretofore been subject to the jurisdiction of the Bengal High Court.

The Bengal Division of the Presidency of Fort William now consists³ of— Bengal division.

1. The Chittagong Division, comprising the districts of Chittagong, the Chittagong Hill-tracts, Noakhali, and Tippera.

2. The Dacca Division, comprising the districts of Bakarganj, Dacca, Faridpur, and Mymensingh.

3. The Rajshahi Division, comprising the districts of Bogra, Dinajpur, Jalpaiguri, Malda, Pabna, Rajshahi, and Rangpur.

4. The Burdwan Division, comprising the districts of Bankura, Birbhum, Hooghly, Howrah, and Midnapur.

5. The Presidency Division, comprising the town of Calcutta and the districts of Jessore, Khulna, Murshidabad, Nadia, and the 24 Parganas.

6. The District of Darjeeling.

7. The Assam Valley Districts Division; comprising the districts of Darrang, Garo Hills, Goalpara, Kamrup, Lakhimpur, Nowgong, and Sibsagar; and the Surma Valley and Hill Districts Division, comprising the districts of Cachar, Khasi and Jaintia Hills, Lushai Hills, Naga Hills, and Sylhet.

Clause 5 provides for the making of declarations by the Judges.

Declarations.

Clause 6 provides for the use of a seal and for the custody of such seal.

Seal.

"Clause 7. And We do hereby further grant, ordain, and appoint all writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued or awarded by the said High Court of Judicature at [Fort William in Bengal],⁴ shall run and be in the name or style of Us, or of Our lineal successors, and shall be sealed with the seal of the said High Court. Writs, etc., to issue in name of the Crown and under seal.

"Clause 8. And We do hereby authorise and empower the Chief Justice of the said High Court of Judicature at [Fort William in Bengal]⁴ from time to time, as occasion may require, and subject to any rules and restrictions which may Appointments.

¹ As to then pending proceedings.

1912; Act VII of 1912. As to Darjeeling, see Act XIX of 1867, s. 2.

² Act V of 1872, s. 1.

³ Proclamation of the Governor-General in Council of March 22nd,

⁴ For Madras: "Madras." For Bombay: "Bombay."

be prescribed by the [Governor-General in Council]¹ to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters-Patent . . .² and it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively; and as the [Governor-General in Council]³ shall approve of: Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court so long as they shall hold their respective offices; but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the [Governor-General in Council],⁴ and to absent himself from the said limits during the term of such leave, in accordance with the said rules.⁵

Admission of Advocates, Vakils, and Attorneys.

Admission of
Advocates,
Vakils, and
Attorneys.

"Clause 9. And We do hereby authorise and empower the said High Court of Judicature at [Fort William in Bengal]⁶ to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils, and Attorneys shall be and are hereby authorised to appear for the suitors of the said Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may, by its rules and directions, determine, and subject to such rules and directions.

Rules for the
qualifications,
etc., of Advoca-
tes, Vakils,
and Attorneys.

"Clause 10. And We do hereby ordain that the said High Court of Judicature at [Fort William in Bengal]⁷ shall have power to make rules for the qualification and admission of

¹ For *Madras and Bombay*: "Governor in Council."

² See Amending Letters-Patent, 1919, cl. 1 (a).

³ For *Madras and Bombay*: "Governor in Council, subject to the control of the Governor-General in Council."

⁴ For *Madras and Bombay*:

"Governor in Council."

⁵ See paras. 9, 10 of Despatch of Secretary of State accompanying first Letters-Patent.

⁶ For *Madras*: "Madras." For *Bombay*: "Bombay."

⁷ For *Madras*: "Madras." For "Bombay."

proper persons to be Advocates, Vakils, or Attorneys-at-law; and shall be empowered to remove or to suspend from practice, on reasonable cause,¹ the said Advocates, Vakils, or Attorneys-at-law; and no person whatsoever,² but such Advocates, Vakils, or Attorneys, shall be allowed to act³ or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor."

The High Court is not precluded from removing or suspending an advocate by the fact that he is a member of the English Bar.⁴

Where the High Court has made an order of dismissal an appeal lies by way of petition to His Majesty for leave to appeal and not otherwise.⁵

As to the powers of the Courts to deal with practitioners in the subordinate Courts, see the Legal Practitioners Act, 1879 (XVIII of 1879), *post*, chapter xxxix.

Civil Jurisdiction of the High Court.

"Clause 11. And We do hereby ordain that the said High Court of Judicature at [Fort William in Bengal]⁶ shall have and exercise ordinary⁷ original civil jurisdiction within such local limits as may, from time to time, be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed, within the limits declared and prescribed by the proclamation fixing the limits of Calcutta issued by the Governor-General in Council on September 10th, 1794, and the ordinary original civil jurisdiction of the High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction."

Local limits of
ordinary original
civil
jurisdiction.

The limits of the ordinary original civil jurisdiction of the High Court at Calcutta have been prescribed by Act XV of 1919.

In the Bombay and Madras Letters-Patent the limits of

¹ See *In re Sarbadhicary* (1906), 34 I. A., 41; 29 All., 95; 11 C. W. N., 278; 9 Bom. L. R., 9. *In re Jivanlal Varajray Desai* (1919), 44 Bom., 418.

² Not even a "recognised agent": *Prannath Chowdhry v. Ganendro Mohun Tagore* (1865), 3 W. R. C. R., 108.

³ This includes giving instructions to counsel in references from a Small Cause Court: *Moran v. Dewan Ali Serang* (1872), 3 B. L. R., 418.

⁴ *In re Sarbadhicary* (1906), 34 I. A., 41; 29 All., 95; 11 C. W. N.,

278; 9 Bom. L. R., 9.

⁵ *G. S. D. v. Government of Bombay* (1907), 32 Bom., 106; 10 Bom. L. R., 21.

⁶ For Madras: "Madras." For Bombay: "Bombay."

⁷ This expression "embraces all such jurisdiction as is exercised in the ordinary course of law and without any special step being necessary to assume it": *Navisahoo v. Turner* (1889), 16 I. A., 156, at p. 162; 13 Bom., 520, at p. 533.

the local jurisdiction of the respective High Courts at the date of the publication of the Letters-Patent were fixed until others might be prescribed.

Clause 11 of the Madras Letters-Patent of 1865 provides for the ordinary original civil jurisdiction to be exercised within the limits of the local jurisdiction of the High Court of Madras at the date of the publication of the Letters-Patent of 1865, *i.e.* under the Letters-Patent of 1862.

The 11th clause of the Madras Letters-Patent of 1862 declares the local limits of the Court in its original jurisdiction until altered by the Governor in Council to be the limits "of the present jurisdiction of the Supreme Court."

There are similar provisions under clause 11 of the Letters-Patent granted to the High Court of Bombay in 1862 and 1865.

Powers to
extend bound-
aries of presi-
dency towns.

The ordinary original civil jurisdiction of these three High Courts extends within the limits of the towns of Calcutta, Madras, and Bombay respectively, but the Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras, and Bombay respectively; and any Act of Parliament, Letters-Patent, charter, law or usage conferring jurisdiction, power or authority within the limits of these towns respectively shall have effect within the limits as so extended.¹

A High Court cannot in its original jurisdiction issue a warrant for the execution of a decree to be executed outside the limits of such original jurisdiction.² A process for contempt of Court stands upon a different footing,³ as it is not issued in exercise of the Court's civil jurisdiction.⁴

Original juris-
diction as to
suits.

"Clause 12. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal]⁵ in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try, and determine suits of every

¹ 5, 6 Geo. V. c. 61, s. 62.

² *Ramnad, Rajah of v. Seetharam Chetty* (1902), 26 Mad., 120; *Sagore Dutt v. Ram Chunder Mitter* (1862), 1 Hyde, 186; *Monomotho Nath Dey v. Greender Chunder Ghose* (1875), 24 W. R. C. R. 866.

³ *Harivallabhdas Kallindas v. Utamchand Manikchand* (1870), 7 Bom. H. C., 172.

⁴ *Navivahoo v. Narotamdas Candas* (1882), 7 Bom., 5.

⁵ For Madras: "Madras." For Bombay: "Bombay."

description,¹ if, in the case of suits for land² or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action³ shall have arisen, either wholly, or, in case the leave of the Court shall have been first⁴ obtained, in part, within the local limits of the ordinary original civil jurisdiction of the said High Court, or if the defendant⁵ at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits: except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at [Calcutta]⁶ in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees."

Thus the High Court has jurisdiction—

- (1) Where the suit is for land or other immovable property situate within the limits of the towns of Calcutta, Madras, and Bombay respectively;
- (2) Where the suit is for land or other immovable property situate partly within and partly without such jurisdiction and leave⁷ of the Court shall have been first obtained.⁸
- (3) In other suits—
 - (a) Where the whole cause of action has arisen within such limits, or
 - (b) where part⁹ of the cause of action has arisen within such limits, and the Court has before the institution of the suit given leave to institute the suit, or¹⁰

¹ For which no special tribunal has been provided; see *Peshotam Hormasji Dastoor v. Meherbai* (1888), 18 Bom., 302.

² See *post*, pp. 40–44.

³ *Post*, pp. 44, 45.

⁴ *Post*, p. 44.

⁵ This means all the defendants, if there are more than one: *Ismail (Hadjee) v. Mahomed (Hadjee)* (1874), 18 B. L. R., 91; 21 W. R. C. R., 303. Cf. *Parshotam v. Pema Harji* (1895), 21 Bom., 121.

⁶ For *Madras*: "Madras." For *Bombay*: "Bombay."

⁷ As to the case where the defendant is seeking the assistance of the Court with regard to land outside of the limits of the jurisdiction, see *post*, pp. 40–48.

⁸ *Ganoda Sundari Chaudhurani v. Nalini Ranjan Raha* (1908), 86 Calc., 28, at p. 40; 12 C. W. N., 1065, at

pp. 1072, 1073; *Balaram Bhaskarji v. Ramchandra Bhaskarji* (1898), 22 Bom., 922, at p. 925; *Prasannamayee Dasi v. Kadambini Dasi* (1868), 3 B. L. R. O. C., 85; *Jagadamba Dasi (S.M.) v. Padmamani Dasi (S.M.)* (1871), 6 B. L. R. 686; *Seshagiri Rau v. Rama Rau* (1896), 19 Mad., 448. See, however, *Krishna Kishore Dc v. Amarnath Khetry* (1920), 24 C. W. N., 633; 47 Calc., 770. See *post*, p. 47, note 8.

⁹ In *Kessowjee Damodar Jairam v. Luckmidas Laddha* (1889), 13 Bom., 404, the Court considered that "part" meant material part. Although the Court would generally grant leave only if the part within the jurisdiction was a material part, it is submitted that the word "material" cannot be added to the section.

¹⁰ *Srinivasa Moorthy v. Venkata Varada Ayyangar* (1906), 29 Mad., 239.

(c) where the defendant¹ at the time of the institution of the suit dwells, or carries on business, or personally works for gain within such limits.

A jurisdiction against one defendant does not give jurisdiction over another defendant.²

As to the application of this clause to counterclaims, see *Vithaldas Gulabdas v. Hyderabad Spinning and Weaving Co.* (1922), 47 Bom., 182.

The terms of this clause permit suits against non-resident foreigners.³

"Suits for land."

Where the suit is for land wholly outside the limits of the original jurisdiction of the Court, the Court has no jurisdiction even although the land may be in the hands of the Receiver of the Court.⁴

The fact that one of the mortgagors has no interest in such of the mortgaged properties as were within the jurisdiction does not exclude the jurisdiction,⁵ but a sub-mortgagee cannot by suing on both mortgages give to the Court a jurisdiction which it would not otherwise possess.⁶

"A suit for land" means a suit for the purpose of acquiring title to, or control over, land.⁷

The Madras High Court goes so far as to say that it "is inclined to hold that a suit which prays for any relief with reference to any specific immovable property is a suit for land."⁸ The same Court held that "a suit for land" includes any suit in which a decree is asked for operating directly upon the land, and therefore includes any suit brought to enforce a security upon land.⁹

Suit in personam.

"A suit exclusively in *personam* where the person against whom the relief is sought is within and subject to the jurisdiction, though the relief sought is in respect of acts done on land situated beyond the local limits of the original jurisdiction is not "a suit for land."¹⁰

The Bombay High Court claimed jurisdiction in all cases where it can act in *personam* in the same way as English Courts exercised jurisdiction with regard to lands in the colonies. This claim would apparently limit the expression "suit for land" to a suit for the delivery of land to the plaintiff.¹¹ They accordingly exercised jurisdiction in a suit for specific

¹ I.e. all the defendants; *ante*, p. 39, note 5.

² *Bengal and North Western Railway Company v. Sadaram Bhairondan* (1922), 49 Cal., 895.

³ *Bavah Meah Saib v. Khajee Meah Saib* (1869), 4 Mad. H. C., 218.

⁴ *Denonath Sreemoney v. Hogg* (1868), 1 Hyde, 141.

⁵ *Matigara Coal Company v. Shragers* (1911), 38 Cal., 824.

⁶ *Krishna Kishore De v. Amarnath Khetry* (1920), 47 Cal., 770; 24 C. W. N., 688.

⁷ *Delhi and London Bank v. Wordie* (1876), 1 Cal., 249, at p. 263; *Kellie v. Fraser* (1877), 2 Cal., 445, at p. 463; *Land Mortgage Bank v. Sudurudeen Ahmed* (1899), 19 Cal., 858, at p. 867, followed in *Nagendra*

Nath Chowdhuri v. Erailigool Company (1922), 49 Cal., 670; 27 C. W. N., 65. Cf. Act V of 1908 (Civil Procedure), s. 16, paras. (a) to (e).

⁸ *Sundara Bai Sahiba v. Tirumal Rao Sahib* (1909), 38 Mad., 181, at p. 182. That was a suit to enforce a right of maintenance against specific land.

⁹ *Nalum Lakshimikantham v. Krishnasawmy Mudaliar* (1908), 27 Mad., 157.

¹⁰ *Rajmohun Bose v. East India Railway Company* (1872), 10 B. L. R., 241, at p. 249.

¹¹ See *Yenkoba Balshet Kasar v. Rambhaji* (1872), 9 Bom. H. C., 12; *Vaghaji v. Camaji* (1904), 29 Bom., 249; 6 Bom. L. R., 958.

performance of an agreement to mortgage land,¹ in a suit for sale on a mortgage,² and in a suit for foreclosure,³ although the land in dispute was outside the local limits of the original jurisdiction of the Court.

A late decision of the same Court has treated a suit for a declaration of title as a suit for land.⁴

In *Sundara Bai Sahiba v. Tirumal Rao Sahib*⁵ the Madras High Court pointed out that the authority of the above Bombay decision, which claimed jurisdiction in all cases in which they could act *in personam*, was considerably shaken, if not overruled, by the late decision in *Vaghoji v. Camaji*.⁶

The English Courts of Equity only assumed jurisdiction in relation to land abroad, when as between the litigants and their predecessors some privity or relation was established on the ground of contract, trust or fraud.⁷

It must be remembered that the jurisdiction of the Indian High Courts is limited by the terms of their Letters-Patent.

In the case of the following suits, it has been held that the High Court has no original jurisdiction, if the whole of the land in suit be situate outside the local limits of its jurisdiction:—

- | | |
|---|--------------------|
| (a) A suit for possession of immovable property. ⁸ | Possession |
| (b) A suit on a mortgage. ⁹ | |
| (c) A suit for the rents and profits of land, when the plaintiff is seeking to obtain possession. ¹⁰ | Rents and profits. |

A mere suit for rent is not a "suit for land."¹¹

- (d) A suit for damages for trespass to immovable property, where the substantial question is the right to the land.¹²

It is submitted that where the suit does not contemplate or necessitate any declaration or decision with regard to the ownership of the land, the suit is not a suit for land.

¹ *Holkar v. Ashburner* (1890), 14 Bom., 358.

² Cf. *Yenkoba Balshet Kasar v. Rambhaji* (1872), 9 Bom. H. C., 12. See *Holkar v. Ashburner* (1890), 14 Bom., 358, at p. 359.

³ *Sorabji v. Rattonji* (1898), 22 Bom., 701.

⁴ *Vaghoji v. Camaji* (1904), 29 Bom., 249; 6 Bom. L. R., 958.

⁵ (1919), 88 Mad., 181, at p. 182.

⁶ (1904), 29 Bom., 249; 6 Bom. L. R., 958. See *Zulekhabai v. Ebrahim Haji Vyedina* (1912), 87 Bom., 494, at p. 503; 14 Bom. L. R., 846, at pp. 851, 852.

⁷ *Vaghoji v. Camaji* (1904), 29 Bom., 249; 6 Bom. L. R., 958. Cf. *Jumna Dass v. Harcharan Dass* (1911), 88 Calc., 405; 16 C. W. N., 4.

⁸ *Hara Lal Banerjee v. Nitambini*

Debi (1901), 29 Calc., 815.

⁹ *Harendra Lal Roy Chowdhuri v. Hari Dasi Debi* (1914), 41 I. A., 110; 41 Calc., 972; 18 C. W. N., 817; 16 Bom. L. R., 400. In that case an attempt was made to give jurisdiction by including non-existing property which was described as being in Calcutta.

¹⁰ *Ebrahim Ismail Timol v. Provas Chunder Mitter* (1908), 86 Calc., 59.

¹¹ See *Fink v. Buldeo Dass* (1899), 26 Calc., 715; 3 C. W. N., 524; *Runga Lal Lohea v. Wilson* (1898), 2 C. W. N., 718.

¹² *Sudamdih Coal Company v. Empire Coal Company* (1915), 42 Calc., 942; *Lodna Colliery v. Bipin Bihari Bose* (1912), 39 Calc., 739; *Srinivasa Aiyangar v. Kannappa Chetti* (1915), 30 Mad. L. J., 120.

- Declaration of title.** (e) A suit for a declaration of title to land,¹ or to an interest therein,² or for a declaration as to boundaries of land.³
- Title deeds.** (f) A suit for the possession of title deeds, where the substantial question is the title of the plaintiff.⁴
- Partition.** (g) A suit for the partition of property, the whole of the immovable portion of which is outside the jurisdiction.⁵
- The Court may, but is not obliged to, decree partition of the property situated within the jurisdiction, while declining jurisdiction as to property outside the jurisdiction.⁶ Where a portion of the land is within the jurisdiction, although a portion is outside such jurisdiction, and leave has been obtained, a partition suit can be brought.⁷
- Foreclosure or sale.** (h) A suit for foreclosure,⁸ or sale.⁹
- A different view has been taken in Bombay.¹⁰
- Specific performance.** (i) A suit for specific performance of an agreement to execute a mortgage.¹¹ A different view has been taken in Bombay.¹²
- A purchaser's suit for specific performance of an agreement to sell would be upon the same footing.
- As to a vendor's suit, see *post*, p. 43.
- Maintenance.** (j) A suit for maintenance charged only on specific land outside the jurisdiction.¹³

¹ *Vaghaji Kuverji v. Camaji Bomani* (1904), 29 Bom., 249; 6 Bom. L. R., 958.

² *Kanti Chunder Pal Chowdhry v. Kissory Mohun Ray* (1887), 19 Cal., 361, note.

³ *East Indian Railway Company v. Bengal Coal Company* (1875), 1 Cal., 95.

⁴ *Zulekabei v. 'Ebrahim Haji Vyedina* (1912), 87 Bom., 494; 14 Bom. L. R., 846.

⁵ *Seshagiri Rau v. Rama Rau* (1896), 19 Mad., 448; *Jairam Narayan Raje v. Atmaram Narayan Raje* (1890), 4 Bom., 432. Cf. *Ramchandra Dada Naik v. Dada Mahadev Naik* (1861), 1 Bom. H. C., App. LXXVI.

⁶ *Abdul Karim Sahib v. Badrudeen Sahib* (1904), 28 Mad., 216; *Balaram v. Ramchandra* (1898), 22 Bom., 922; *Punchanun Mullick v. Shib Chunder Mullick* (1887), 14 Cal., 835.

⁷ *Prasannamayi Dasi v. Kadambini Dasi* (1868), 8 B. L. R. O. C., 85; *Jagadamba Dasi (S. M.) v. Padmamani Dasi (S. M.)* (1871), 6 B. L. R., 686. As to the grant of leave when a portion of the property is outside British India, see *Govindlal Bansilal v. Bansilal Motilal* (1921), 46 Bom.,

249; 23 Bom. L. R., 1049.

⁸ *Blaquiere v. Ramlhone Doss* (1865), Bourke O. C., 319; *Bibee Jaun v. Mahomed Hadee* (1866), 1 Ind. Jur. N. S., 40.

⁹ *Nalum Lakshimi Kantham v. Krishnasawmy Mudaliar* (1908), 27 Mad., 157. Cf. *In the matter of Leslie* (1872), 9 B. L. R., 171.

¹⁰ *Sorabji v. Rattonji* (1898), 22 Bom., 701; *Holkar v. Ashburner* (1890), 14 Bom., 358. Cf. *Yenkoba Balshet Kasar v. Rambhaji* (1872), 9 Bom. H. C., 12.

¹¹ *Sreenath Roy v. Cally Doss Ghose* (1879), 5 Cal., 82, followed in *Ratanchand Dharamchand v. Gobind Lal Dutt* (1921), 48 Cal., 882. In an earlier case a different view seems to have been taken: *Ramdhone Shaw v. Nobumoney Dossee* (1865), Bourke, O. C., 218. See *Land Mortgage Bank v. Sudrudeen Ahmed* (1892), 19 Cal., 358, at p. 366.

¹² *Holkar v. Ashburner* (1890), 14 Bom., 358.

¹³ *Sundara Bai Sahiba v. Tirumal Rao Sahib* (1909), 38 Mad., 181. See *Radha Bibee v. Mucksoodun Doss* (1874), 21 W. R. C. R., 204.

(A) A suit to carry out a trust with regard to land.¹

Trust.

In the following cases it has been held that the Court has jurisdiction, although the whole of the land is outside the local limits of the jurisdiction:—

(a) A suit to restrain a nuisance;²

Nuisance.

(b) a suit for the taking of the accounts of a partnership carried on to Partnership.
work a tea estate;³

(c) a suit to declare a trust upon land.⁴

Trust.

This is a doubtful decision, but it is in accordance with some of the Bombay decisions,⁵ and was distinguished in *Delhi Bank v. Wordie* (1876), 1 Cal. 249, at p. 265. It is submitted that it is a suit to acquire control over land, and therefore a suit "for land."

(d) a suit for redemption of a mortgage;⁶

Redemption.

(e) a suit for a money decree for money due on a mortgage;⁷

Money.

(f) a vendor's suit for specific performance of an agreement to sell land.⁸

As to a purchaser's suit, see *ante*, p. 42.

(g) a suit alleging breaches of trust and claiming to be a trustee and for other relief—the trust property being land;⁹

(h) a suit to recover title deeds,¹⁰ but if the title of the plaintiff is Title deeds.
the substantial point to be decided in the suit, the Court has no jurisdiction;¹¹

(i) a suit for administration;¹²

Administra-
tion.

(j) an application to have an award, which is related to property outside the jurisdiction, filed, the award having been made within the jurisdiction.¹³

Award.

¹ *Delhi Bank v. Wordie* (1876), 1 Cal., 249.

² *Rajmohun Bose v. East India Railway Company* (1872), 10 B. L. R., 241.

³ *Kellie v. Fraser* (1877), 2 Cal., 445.

⁴ *Bagram v. Moses* (1862), 1 Hyde, 284.

⁵ *Ante*, p. 40.

⁶ *Lallmoney Dassi v. Jodoo Nauth Shaw* (1862), 1 Ind. Jur. N. S., 819. See *Kanti Chunder Pal Chaudhry v. Kissory Mohun Roy* (1887), 19 Cal., 361, note.

⁷ See *Sreenath Roy v. Cally Doss Ghose* (1899), 5 Cal., 82; *Kanti Chunder Pal Chaudhry v. Kissory Mohun Roy* (1887), 19 Cal., 361.

⁸ *Land Mortgage Bank v. Sudurudeen Ahmed* (1892), 19 Cal., 358, followed in *Nagendra Nath Chowdhuri v. Eralgool Company* (1922), 49 Cal., 670; 27 C. W. N., 65.

⁹ *Juggodumba Dossee v. Puddomoney Dossee* (1875), 15 B. L. R., 818.

¹⁰ *Juggernauth Doss v. Brijnath Doss* (1878), 4 Cal., 322; 8 C. L. R., 375.

¹¹ *Zulekabal v. Ebrahim Haji Vyedina* (1912), 37 Bom., 494; 14 Bom. L. R., 846.

¹² *Nistarini Dassi v. Nundo Lal Bose* (1902), 30 Cal., 369; 7 C. W. N., 353, upheld on appeal: *Benode Behari Doss v. Nistarini Dassi (Srimati)*, (1905), 32 I. A., 193; 33 Cal., 180; 9 C. W. N., 961; 7 Bom. L. R., 887; *Srinivasa Moorthy v. Venkata Varada Ayyangar* (1906), 29 Mad., 239, upheld in appeal (1911), 38 I. A., 129; 34 Mad., 257; 15 C. W. N., 741; 13 Bom. L. R., 520; *Abdul Hussain v. Mahomedally* (1921), 46 Bom., 772; 23 Bom. L. R., 1326.

¹³ *Seshayya Chettiar v. Chengaya Chettiar* (1900), 24 Mad., 81.

Claim by
defendant.

The words in the clause restricting "suits for land" to cases where the land is situate within the limits of the ordinary original civil jurisdiction are not applicable to a case where a defendant is the person seeking the exercise of the Court's jurisdiction.¹

Meaning of
"cause of
action."

The expression "cause of action" in the 12th clause of the Letters-Patent means the whole collection of essential facts which create the right to sue.² It would ordinarily include all the facts which have to be stated in the plaint, and would be coincident with the expression "facts in issue," which are to be found in the Indian Evidence Act.³

If any one of such essential facts has taken place within the jurisdiction, the Court can give leave to sue.

"The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour."⁴

Generally speaking, "cause of action" includes the right and the infraction of the right. In the case of a contract it would mean and include the place where the contract was made, the place or places in which it was to be fulfilled by either side,⁵ and, what is generally but not always equivalent, the place where the breach took place.⁶

With leave under Clause 12, the High Court can exercise jurisdiction, if any one of these places be within its jurisdiction,⁷ but without such leave cannot do so unless they are all so situate.⁸ This includes cases where a third party is added under the Bombay High Court Rules.⁹

A subsequent promise to pay,¹⁰ or an antecedent undertaking not to

¹ *Kissory Mohun Roy v. Kali Churn Ghose* (1897), 24 Calo., 190; 1 C. W. N., 106.

² *Kellie v. Fraser* (1877), 2 Calo., 445, at p. 452; *Musa Yakub v. Manilal* (1904), 29 Bom., 868; 7 Bom. L. R., 20; *De Souza v. Coles* (1868), 3 Mad. H. C., 384, at p. 390; *Motilal v. Surajmal* (1900), 30 Bom., 167; 6 Bom. L. R., 1088; *Ramchander Gaurishankar v. Ganapatram Biswanath* (1919), 47 Calo., 583; *Doya Narain Tewary v. Secretary of State* (1886), 14 Calo., 256.

³ I.e. "any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows." Act I of 1872, s. 8.

⁴ *Chand Kaur (Mussammut) v. Paratab Singh* (1898), 15 I. A., 156, at pp. 157, 158; 16 Calo., 98, at p. 102.

⁵ *Seshagiri Row v. Askur Jung (Nawab)* (1908), 27 Mad., 494; *Bawa Meah Saib v. Meah Saib (Khajee)* (1869), 4 Mad. H. C., 218. Cf. *Sitaran Marwari v. Thompson* (1906), 32 Calo., 884.

⁶ *Dobson v. Bengal Spinning and Weaving Company* (1896), 21 Bom., 126; *Doya Narain Tewary v. Secretary of State* (1886), 14 Calo., 256. See *Kellie v. Fraser* (1877), 2 Calo., 445.

⁷ *Rampurtab Samruthroy v. Prem-sukh Chandamal* (1890), 15 Bom., 98; *Dobson v. Bengal Spinning and Weaving Company* (1896), 21 Bom., 126.

⁸ *Dhunjisha Nusservanji v. Ffordre* (1887), 11 Bom., 649; *Seshagiri Row v. Askur Jung (Nawab)* (1908), 27 Mad., 494.

⁹ *Karim Elahi v. Sher Ahmed* (1920), 22 Bom. L. R., 863.

¹⁰ *Seshagiri Row v. Askur Jung (Nawab)* (1907), 30 Mad., 488.

sue for a certain time,¹ made within the jurisdiction is not a part of the cause of action.

In a suit for malicious prosecution, when an application to initiate Malicious extradition proceedings was made in Bombay, it was held that a part of prosecution, the cause of action arose in Bombay.²

In a suit on a hundi the drawing,³ or the dishonour⁴ of the hundi is Hundi part of the cause of action.

In a suit for administration the undertaking to administer forms Administration part of the cause of action.⁵

In a suit to set aside a release executed in Calcutta, but relating Suit to set to property in Bombay, part of the cause of action arises in Bombay.⁶ aside release.

In a suit to wind up a partnership the Court has jurisdiction if any Partnership part of the assets are within the local limits.⁷

It is submitted that in a suit to set aside a fraudulent decree the Suit to set place where the decree was obtained⁸ or where the fraudulent acts, aside fraudulent including the execution of the decree and the realisation of the decree, or one of them, were committed, as forming part of the cause of action,⁹ is the place which determines the jurisdiction of the Court.

In a suit for money due on accounts the facts that instructions were Account sent from Bombay, the accounts were rendered in Bombay, and that the stated. money was payable in Bombay, give the Bombay High Court jurisdiction, at any rate where leave had been granted.¹⁰

The expression "dwells" means ordinarily "has his usual and Meaning of permanent place of residence."¹¹ It does not include a mere temporary residence,¹² especially when the defendant has a permanent residence elsewhere.¹³ In some cases the defendant may have more than one usual place of residence.¹⁴ expression "dwells."

¹ *Deep Narain Singh v. Dietert* (1908), 81 Cal., 274; 8 C. W. N., 207.

² *Musa Yakub v. Manilal* (1904), 29 Bom., 368; 7 Bom. L. R., 20.

³ *Rampurtab Samruthroy v. Prem-sukh Chandamal* (1890), 15 Bom., 93.

⁴ *Suganchand Shivdas v. Mulchand Joharimal* (1875), 12 Bom. H. C., 113; *Sewaram Gokaldas v. Bajrang-das Hardwar* (1915), 40 Bom., 478; 18 Bom. L. R., 57.

⁵ *Srinivasa Moorthy v. Venkata Varada Ayyangar* (1906), 29 Mad., 289, upheld on appeal (1911), 88 I. A., 129; 84 Mad., 257; 15 C. W. N., 741; 13 Bom. L. R., 520.

⁶ *Ismail (Hadjee) v. Mahomed (Hadjee)* (1874), 18 B. L. R., 91; 21 W. B. C. R., 303.

⁷ See *Bhugwandas Mitharam v. Rivett-Carnac* (1898), 26 I. A., 82; 28 Bom., 544; 8 C. W. N., 186. Leave was granted in this case.

⁸ Cf. *Umrao Singh v. Hardeo* (1907), 29 All., 418; *Dan Dayal v. Munna*

Lal (1914), 36 All., 564.

⁹ See *Jawahir v. Neki Ram* (1914), 37 All., 189; *Banko Behari Lal v. Pokhe Ram* (1902), 25 All., 48; *Benode Behari Bose v. Nistarini Dassi (Srimati)* (1905), 32 I. A., 193; 33 Cal., 180; 9 C. W. N., 961; 7 Bom. L. R., 887.

¹⁰ *Motilal Pratabchund v. Surajmal Joharmal* (1904), 30 Bom., 167; 6 Bom. L. R., 1088.

¹¹ *Gosvami (Shri) v. Govardhanlalji (Shri)* (1890), 14 Bom., 541; s.o. on appeal (1898), 21 I. A., 13; 18 Bom., 294.

¹² See *Mahomed Shuffli v. Laldin Abdula* (1878), 3 Bom., 227; *Gosvami (Shri) v. Govardhanlalji (Shri)* (1890), 14 Bom., 541; s.o. on appeal (1898), 21 I. A., 13; 18 Bom., 294.

¹³ *Cowasjee Framjee v. Wallace* (1868), 1 Bom. H. C., 113; *Emritloll v. Kidd* (1864), 2 Hyde, 117.

¹⁴ *Orde v. Skinner* (1880), 7 I. A., 196; 3 All., 91; 7 C. L. R., 295;

Where the defendant has no permanent residence, the place where he is at the time may be considered the place where he "dwells."¹

Where a native of the State of Mysore took up his abode with his wife and family in a hired house in Madras, meaning to remain there several months, and was actually living there when the suit was instituted, it was held that he was "dwelling within the jurisdiction of the Madras High Court."²

Meaning of expression "carries on business."

A man is amenable to the jurisdiction, if he either personally or by a special³ agent⁴ carries on business⁵ within the jurisdiction, even if he has no regular place of business.⁶

It was held in *Kessowji Damodar Jairam v. Khimji Jairam* (1888), 12^a Bom., 507, that a person not a British subject, and who is resident out of the jurisdiction, but carries on a branch business in Bombay through an agent, is not liable to be sued in the High Court of Bombay when the cause of action has arisen wholly outside the jurisdiction. It is submitted that there is no distinction in this respect between the case of a British subject and a foreigner.⁷

Suit against Secretary of State.

The Secretary of State for India neither dwells nor carries on business nor personally works for gain in any place in British India,⁸ so a suit against him must be brought where the cause of action, or, with the leave of the Court, part of the cause of action arose.

Injunction to restrain suit.

When the defendant does not dwell or carry on business within the local limits of the ordinary original civil jurisdiction a High Court cannot

Nishadiney Dossee (S.M.) v. Kallykisto Ghose (1864), Coryton, 24.

¹ See *Morris v. Baumgarten* (1865), Coryton, 152; *Fernandez v. Wray* (1900), 25 Bom., 176; 8 Bom. L. R., 291.

² *Srinivasa Moorthy v. Venkata-varada Iyengar* (1911), 88 I. A., 129; 34 Mad., 257; 15 C. W. N., 741; 18 Bom. L. R., 520; s.c. in Court below (1906), 29 Mad., 239.

³ The mere employment of a general broker or commission agent is not sufficient: *Chinnammal v. Tulukannatammal* (1866), 3 Mad. H. C., 146; *Khimji v. Forbes* (1871), 8 Bom. H. C., 102.

⁴ *Muthaya Chetti v. Allan* (1880), 4 Mad., 209. The manager of a joint Hindu family is not the agent of the members of the family within the meaning of this provision: *Annamalai Chetty v. Murugasa Chetty* (1908), 80 I. A., 220; 26 Mad., 544; 7 C. W. N., 754; 5 Bom. L. R., 494. The agent must be one for the purpose of carrying on an essential part of the particular business. If it is for retail sale then the agent must be one for

the purpose of selling. The employment of an agent for the purpose of receiving goods is not sufficient: *Framjee v. Hormusjee* (1865), 1 Bom. H. C., 220.

⁵ I.e. business of a kind in which actionable debts may be contracted: *Girdhariji (Goswami Shri) v. Goverdhanlalji (Shri)* (1893), 21 I. A., 13; 18 Bom., 294.

⁶ *Greeschunder Bonnerjee v. Collins* (1864), 2 Hyde, 79. See *Monindra Chandra Nundy (Maharaja) v. Chundry Churn Banerjee* (1920), 24 C. W. N., 583.

⁷ See *Bavah Meah Saib v. Khajee Meah Saib* (1869), 4 Mad. H. C., 218, ante, p. 40. Cf. *Girdhar Damodhar v. Kassighar Hiraghar* (1898), 17 Bom., 662, and *Rambhat v. Shankar Basvant* (1901), 25 Bom., 528; 3 Bom. L. R., 82.

⁸ *Rodricks v. Secretary of State* (1912), 40 Calc., 308 (S. C. in Court below, 16 C. W. N., 747), following *Doya Narain Tewary v. Secretary of State* (1886), 14 Calc., 258. A different view was taken in *Subbaraya Mudali v. Government* (1868), 1 Mad. H. C., 286.

restrain a suit or other proceeding in a Court which is outside the limits of its jurisdiction.¹

In all cases where leave is necessary the Court does not acquire jurisdiction, unless such leave be given by a distinct order² previous to the institution of the suit.³ or so far as added defendants are concerned previous to their addition as defendants.⁴

As to waiver, see *ante*, p. 7.

Leave is given with reference to the cause of action, as described in the plaint.⁵ In case leave is given there is no objection to an amendment of the plaint, provided the cause of action be not altered.⁶

When a suit has been withdrawn with leave to bring a new suit on the same cause of action,⁷ or where the plaint has been amended,⁸ fresh leave is necessary.

In considering whether it will grant leave to sue the Court will, amongst other things, consider the convenience of the parties,⁹ or of the witnesses.¹⁰

Leave is not a mere matter of course, but a matter of judicial discretion to be exercised in accordance with the facts alleged in the plaint. The discretion should be exercised with great caution when the defendant is an absent foreigner,¹¹ or where a portion of the property is outside British India.¹² As to waiver of objection on account of leave not being granted, see *ante*, pp. 8, 9.

¹ *Jumna Dass v. Harcharan Dass* (1911), 88 Cal., 405; 16 C. W. N., 4; *Vulcan Iron Works v. Bishumbhur Prosad* (1908), 86 Cal., 283. *Contra Mungle Chand v. Gopal Ram* (1906), 84 Cal., 101. See *Narayan v. Janakibai* (1915), 39 Bom., 604; 17 Bom. L. R., 655; *Mulchand Raichand v. Gill* (1919), 44 Bom. 283; 21 Bom. L. R., 963.

² *Jairam Narayan Raje v. Atmanarayan Narayan Raje* (1880), 4 Bom., 482.

³ *Rampurtab Samruthroy v. Premsukh Chandamal* (1890), 15 Bom., 93; *Abdool Hamed (Shaikh) v. Promothonauth Bose* (1866), 1 Ind. Jur. N. S., 218; *Abdul Kadir v. Doolanbibibi* (1913), 87 Bom., 563; 15 Bom. L. R., 672; *Kellie v. Fraser* (1877), 2 Cal., 445. See *ante*, p. 39, note 8.

⁴ *Rampurtab Samrathrai v. Foolibai* (1896), 20 Bom., 767. See *Shaw, Wallace & Co. v. Gordhandas* (1905), 30 Bom., 364; 8 Bom. L. R., 56. The objection can only, it has been held, be taken by the added defendant: *Foolibai v. Rampurtab* (1898), 17 Bom., 466. *Quere* as to this. If

the added defendant was a necessary party could not the original defendant have insisted that a necessary party was not joined in accordance with law? Cf. *Ramsebuk v. Ramlall Koondoo* (1881), 6 Cal., 815; 8 C. L. R., 457.

⁵ *Rampurtab Samruthroy v. Premsukh Chandamal* (1890), 15 Bom., 93.

⁶ *Ibid*; *Fink v. Buldeo Dass* (1899), 26 Cal., 715; 3 C. W. N., 524.

⁷ *Sabhapathi Gurukkal v. Lakshmee Ammal* (1900), 24 Mad., 293.

⁸ *Rampurtab Samruthroy v. Premsukh Chandamal* (1890), 15 Bom., 93; *Shaw, Wallace & Co. v. Gordhandas* (1905), 30 Bom., 364; 8 Bom. L. R., 56.

⁹ *Sheshagiri Row v. Askur Jung (Nawab)* (1907), 30 Mad., 438.

¹⁰ See *Radha Bibee v. Mucksoodun Doss* (1874), 21 W. R. O. R., 204.

¹¹ *Seshagiri Row v. Askur Jung (Nawab)* (1907), 30 Mad., 438.

¹² *Govindlal v. Bansilal* (1921), 46 Bom., 249; 23 Bom. L. R., 1049.

It is open to the defendant to apply to the same Judge² to rescind the order,³ or the permission may be rescinded at the hearing.³

An appeal lies from an order refusing to give leave⁴ or refusing to rescind an order for leave⁵ as from a judgment.

In spite of leave being given, the question as to whether the Court has in law or in fact jurisdiction may be raised at the hearing.⁶

Before the passing of the present Civil Procedure Code (Act V of 1908) it was held that the granting of leave to sue is a judicial act, and cannot be delegated to a Master or other officer,⁷ but under Act V of 1908, s. 128 (i), rules to effect such delegation are allowed.

When the amount claimed is less than Rs.100 the Court has no jurisdiction to try the case, but if the amount claimed exceed that amount the Court has jurisdiction, although the amount decreed be less than that amount.

If a plaintiff bring a suit for a sum greater than the amount due to him in order to give the Court jurisdiction, he may be made to pay the costs of the defendant.⁸

As to costs when a plaintiff sues in the High Court in cases cognizable by a Presidency Small Cause Court, see Act XV of 1882, s. 22.

"Clause 13. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal]⁹ shall have power to remove and to try and determine, as a Court of extraordinary original civil jurisdiction, any suit¹⁰ being or falling within the jurisdiction of any Court, whether within or without the [Bengal Division of the Presidency of Fort William],¹¹ subject to its superintendence,¹² when the said High Court shall think proper to do so, either on the agree-

² *Vythelinga Mudelly v. Cundasawmy Mudelly* (1875), 8 Mad. H. C., 21.

³ *Kessowji Damodar Jairam v. Luckmidas Ladda* (1889), 13 Bom., 404.

⁴ See *Radha Bibee v. Mucksoodun Doss* (1874), 21 W. R. O. R., 204; *Nagamoney Mudaliar v. Janakiram Mudaliar* (1894), 18 Mad., 142; *Sewaram Gokaldas v. Bajrangdat Hardwar* (1915), 40 Bom., 478; 18 Bom. L. R., 57.

⁵ *De Sousa v. Coles* (1868), 3 Mad. H. C., 384.

⁶ *Vaghoji Kuverji v. Camaji Bomani* (1904), 29 Bom., 249; 6 Bom. L. R., 958.

⁷ *Nagamoney Mudaliar v. Janakiram Mudaliar* (1894), 18 Mad., 142; *Rodricks v. Secretary of State* (1912); 16 C. W. N., 747; s.c. on appeal (1912), 40 Calc., 308; *Govindlal v. Bansilal* (1921), 46 Bom., 249; 23 Bom. L. R., 1049.

⁸ *Laliteswar Singh v. Rameswar Singh* (1907), 34 Calc., 619; 11 C. W. N., 649; *King v. Secretary of State* (1908), 35 Calc., 894; 12 C. W. N., 705; *Brij Coomaree v. Alma Chand* (1907); 11 C. W. N., 668. Cf. *Rajam Chetti v. Seshayya* (1895), 18 Mad., 236.

⁹ *Sikurchund v. Sooringmull* (1863), 1 Hyde, 272.

¹⁰ For Madras: "Madras." For Bombay: "Bombay."

¹¹ Transfer can only be made in respect of a pending suit: *Inhabitants of Mahalingpore v. Anderson* (1870), 7 B. L. R., 452, note.

¹² For Madras: "Presidency of Madras." For Bombay: "Presidency of Bombay."

¹³ The High Court of Bengal cannot transfer a case from the Court of the District Judge at Allahabad: *Great Eastern Hotel Company v. Secretary of State* (1866), 1 Ind. Jur. N. S., 249.

Cases under one hundred rupees.

Costs.

Extraordinary original civil jurisdiction.

ment of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

Superintendence and not appellate jurisdiction is the condition of the exercise of the power of removal.¹

The Bombay High Court can transfer a case from the Court of the Resident at Aden.²

An application under this section should be made to a Judge sitting on the Original side of the Court.³

The following, amongst others, have been held to be grounds for transfer:—

(a) In a case where questions of English law were involved, where the witnesses and parties were chiefly European British subjects and the plaintiff was an officer of the High Court residing in Calcutta, the Court transferred the case.⁴

(b) Where the conduct of the Judge showed that he could not deal with the case impartially and without prejudice, and there was a difficult question of law to be tried.⁵

(c) The parties lived in Calcutta, the greater part of the property to be partitioned was in Calcutta, and the expense would be less if the case was tried in Calcutta.⁶

(d) The fact that the witnesses were in Calcutta, and that the plaintiff could not afford the expense of taking them to the mofussil.⁷

(e) Where the parties and witnesses resided in Calcutta, and it would be cheaper to try the case in Calcutta, and all parties desired a transfer.⁸ The mere fact that it would be less expensive to try the case in a Presidency town is not sufficient reason for a transfer.⁹

"Clause 14. And We do further ordain that where a plaintiff has several causes of action against a defendant, such causes of action not being for land¹⁰ or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the High Court to call on the defendant to show cause why the several causes of action should not be joined

Joinder of several causes of action.

¹ *Municipal Officer, Aden v. Ismail (Hajee)*, 38 I. A., 38, at p. 42; 30 Bom., 246, at p. 250; 10 C. W. N., 185, at p. 198; 8 Bom. L. R., 4. Cf. Government of India Act, 1915, s. 107, ante, p. 27.

² *Municipal Officer, Aden v. Ismail (Hajee)* (1905), 38 I. A., 38; 30 Bom., 246; 10 C. W. N., 185; 8 Bom. L. R., 4.

³ *Doucett v. Wise* (1865), 1 Ind. Jur. N. S., 227; 4 W. R. M. A., 7.

⁴ *Ibid.*

⁵ *Kapilnauth Sahai Deo v. Govern-*

T. C.J.I.

ment (1872), 10 B. L. R., 168.

⁶ *Jotendronauth Mitter v. Rajkristo Mitter* (1889), 16 Calc., 771.

⁷ *Harendra Lall Roy v. Sarvamangala Dabee* (1896), 24 Calc., 188; 1 C. W. N., 109.

⁸ *Payn v. Administrator-General* (1880), 5 Calc., 766; 6 C. L. R., 221.

⁹ *Ojooderam Khan (Rajah) v. Nobinmoney Dossee* (1866), 1 Ind. Jur. N. S., 396.

¹⁰ *Ante*, pp. 40-43.

together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit."

This order may be made at any time before the hearing.¹ It can be made in a case in which leave to sue has been obtained.²

Appeal from judgment of single judge or where judges are equally divided in opinion.

Clause 15³. And We do further ordain that an appeal shall lie to the said High Court of Judicature at [Fort William in Bengal],⁴ from the judgment⁵ (not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, 1915, or in the exercise of criminal jurisdiction)⁶ of one Judge of the said High Court,⁷ or of one Judge of any Division Court, pursuant to section 13 of the said recited Act,⁸ and that an appeal shall also lie to the said High Court from the judgment⁹ (not being a sentence or order as aforesaid) of two or more Judges of the said High Court, or of such Division Court, wheresoever such Judges are equally divided in opinion,¹⁰ and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or Their Privy Council, as hereinafter provided."¹¹

¹ *Dobson v. Krishna Mills* (1910), 34 Bom., 564; 12 Bom. L. R., 988.

² *Ibid.*

³ Cf. Patna Letters-Patent, cl. 10, *post*, p. 78.

⁴ For *Madras*: "Madras." For *Bombay*: "Bombay."

⁵ This means the decree or order, not the opinion of the Judge: *Doucett v. Wise* (1866), 2 Ind. Jur. N. S., 280; *Upendra Nath Bose v. Bindsri Prosad* (1915), 20 C. W. N., 210. It includes the judgment of a Judge of a High Court, sitting alone: *Munshi Lal v. Mahanth Ramasis Puri* (1921), 1 Pat., 246.

⁶ Amending Letters-Patent, 1919, cl. 1 (b). It was held in *Allahabad (Nisar Ali v. Ali Ali)* (1905), 28 All., 138, in *Bombay (Hiralal v. Asi Bai)* (1897), 22 Bom., 891, and in *Madras (Sriramalu v. Ramasam)* (1898), 22 Mad., 109 that there is no appeal from an order of a single Judge in

the exercise of revisional jurisdiction.

⁷ Whether sitting as an original Court or on appeal. See *Benode Behari Bose (Rai) v. Pasupati Nath Bose (Rai)* (1907), 13 C. W. N., 105. This includes the case where the Judges differ, and the judgment of one of them prevails: see *Raku Bibi v. Khaja Mahomed Musa Khan* (1869), 4 B. L. R. A. C., 10; s.c. *Rughoo Bibee (Mussamut) v. Noor Jehan Begum*, 12 W. R. C. R., 459.

⁸ 24, 25 Vict. c. 104, *ante*, p. 19.

⁹ *Post*, pp. 51-56.

¹⁰ I.e. a difference of opinion as to the final decision and not a difference of opinion upon one or more of the points arising: *Omrao Begum* (1870), 13 W. R. C. R., 310; *Hurbuns Sahai v. Thakoor Persad* (1888), 10 Calc., 108.

¹¹ *Jadunath Dandupat v. Hari Kar* (1913), 17 C. W. N., 808; *Jwan Ram v. Tondi Singh* (1911), 34 All., 18;

An appeal lies when the Judges had differed in opinion in an appeal under this clause.¹ In an appeal the whole case is open, not only the point upon which the Judges differed.²

This clause gives an appeal from a decision of a Judge exercising Admiralty, or Vice-Admiralty,³ Testamentary,⁴ Insolvency,⁵ jurisdiction, or any jurisdiction except as specified above.⁶

The expression "judgment" in this clause means a decision, whether "Judgment," final, preliminary, or interlocutory, which affects the merits of any question between the parties by determining a right or liability.⁷

It means a judgment or decree which decides the case one way or the other in its entirety, and does not include a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit.⁸

The expression "judgment" in this section is not synonymous with the expression "decree" in the Civil Procedure Code.⁹

In *Tuljaram Row v. Alagappa Chettiar* (1910), 85 Mad., 1, at p. 7, Sir ARNOLD WHITE, Chief Justice of Madras, said:—"The test seems to be not what is the form of the adjudication but what is its effect in the

Gridharaji Maharaj Tickait (Sri) v. Puroshotam Gossami (1884), 10 Calc., 814; *Surnomoyee (Ranee) v. Luchmepoot Doogur* (1867), B. L. R., Sup. vol., 694; 7 W. R. C. R., 52.

¹ *Jiwan Ram v. Tondi Singh* (1911), 34 All., 13.

² *Mahamad Ravuther (Sheikh) v. British India Steam Navigation Company* (1908), 32 Mad., 95, at p. 107. A different view was taken in *Nun-deepoot Mahta v. Urquhart* (1870), 13 W. R. C. R., 209, and it was held in *Hajra Begum (Shahazadi) v. Hossein Ali Khan (Khaja)* (1869), 4 B. L. R. A. C., 86; 12 W. R. C. R., 498, that no other points can be argued than those which were argued before the Division Bench. See also *Debi Charan Lal v. Mehdi Hussain (Sheikh)* (1916), 1 Pat. L. J., 485, at p. 490; *Ahmad Shah v. Faujdar Khan* (1919), 2 Lahore L. J., 1.

³ *In the matter of the ship "Champion"* (1889), 17 Calc., 66.

⁴ *Sarodasoondery Dossee (S.M.) v. Tincowry Nundy* (1862), 1 Hyde, 70; *Brijcomaree (Mussamut) v. Ramrick Dass* (1901), 5 C. W. N., 781.

⁵ *Official Assignee of Madras v. Lupprian* (1910), 34 Mad., 121.

⁶ *Surnamoyee Ranee v. Luchmepoot Doogur* (1867), B. L. R., Sup. vol., 694, at p. 699; 7 W. R. C. R., 52, at p. 56; see *In the matter of Lyall*

(1902), 29 Calc., 286; 6 C. W. N., 254, *post*, p. 52.

⁷ *Justices of the Peace for Calcutta v. Oriental Gas Company* (1872), 8 B. L. R., 433, at p. 452; *Mohabir Prosad Singh v. Adhikari Kunwar* (1894), 21 Calc., 473; *Seshagiri Row v. Askur Jung Aftab Dowla (Nawab)* (1902), 26 Mad., 502; *Durga Prasada Nayadu (Srimantu Raja Yarlagadda) v. Mallikarjuna Prasada Nayadu (Srimantu Raja Yarlagadda)* (1901), 24 Mad., 358; *De Souza v. Coles* (1868), 3 Mad. H. C., 384, at p. 387; *Gokal Chand v. Samwal Das* (1919), 2 Lahore L. J., 32. This definition is not exhaustive. The Court has to make up its mind whether the particular order in question is a judgment within the meaning of clause 15, having regard to the nature of the order: *Budhu Lal v. Chattu Gope* (1916), 44 Calc., 804, at p. 811; 21 C. W. N., 269, at p. 272. See *Mathura Sundari Dasi v. Haran Chandra Saha* (1915), 43 Calc., 857, at p. 875.

⁸ *Ebrahim v. Fuchhrunnissa Begum* (1878), 4 Calc., 581; 3 C. L. R., 811; *Chitto Sheikh v. Muzzur Hossein (Kazee)* (1864), 2 Hyde, 212.

⁹ *Toolseemoney Dassee v. Sudevi Dassee* (1899), 26 Calc., 361, at p. 373; 3 C. W. N., 347, at p. 356. Act V of 1908, s. 2 (2).

suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters-Patent.¹

"I think, too, an order or an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective if obtained)—e.g. an order on an application for an interim injunction or for the appointment of a receiver is a judgment within the meaning of the clause." In the same case² Mr. Justice KRISHNASAWMI AYYAR held that the word "judgment" covers a preliminary or interlocutory judgment as well as a final judgment, but does not include an interlocutory order.

There is no appeal from an order, the making or refusing of which is in the discretion of the Judge,³ or where the order cannot be made by the Court generally, but only by a particular Judge, such as a review,⁴ or where the order of the Judge is purely ministerial.⁵

The following (amongst others) are judgments within the meaning of Clause 15 of the Letters-Patent:—

(a) An order dismissing on its merits an application to be brought upon the record either in addition to or in substitution for the plaintiff.⁶

(b) An order refusing probate⁷ or an order under section 90 of the Probate and Administration Act (V of 1881).⁸

(c) An order granting⁹ or refusing¹⁰ an application for the custody of a minor.

(d) An order dismissing an application by a judgment creditor of an insolvent for payment of a sum by the Official Assignee.¹¹

¹ See also *Buldu Singh v. Sanwal Singh* (1922), 8 Lahore, 188.

² At p. 18.

³ See *Appasami Pillai v. Somasundra Mudaliar* (1902), 26 Mad., 487; *Durga Prasada Nayadu (Srimantu Raja Yarlagadda) v. Mallikarjuna Prasada Nayadu (Srimantu Raja Yarlagadda)* (1901), 24 Mad., 358. This has been disputed in *Maruthamuthu Pillai v. Krishnamachariar* (1906), 80 Mad., 143.

⁴ *Raku Bibi v. Mahomed Khan (Khajjah)* (1869), 4 B. L. R. A. C., 10; s.c., *Rughoo Bibee (Mussamut) v. Noor Jehan Begum*, 12 W. R. C. R., 459.

⁵ See *Hurish Chunder Chowdhry v. Kali Sundari Debia* (1892), 10

I. A., 4; 9 Calc., 482; 12 C. L. R., 511; s.c. in Court below, *In the matter of Kally Soondery Dabia* (1881), 6 Calc., 594; 7 C. L. R., 543.

⁶ *Commercial Bank of India v. Subju Saheb* (1900), 24 Mad., 252. Act V of 1908, Sec. I, O. 28, r. 10.

⁷ *Umrao Chand v. Bindrabhan Chand* (1895), 17 All., 475.

⁸ *In the goods of Indra Chandra Singh* (1896), 28 Calc., 580.

⁹ *Kristo Kissor Neoghy v. Kadermoye Dossee* (1878), 2 C. L. R., 588.

¹⁰ *In the matter of Narrondas Dhanji*, (1890), 14 Bom., 555.

¹¹ *Puninthavelu Mudaliar v. Bhashyam Ayyangar* (1901), 25 Mad., 406.

(e) An order dismissing a claim by a mortgagee to property attached in execution of a decree.¹

(f) An order dismissing an application that the Court do receive a sum of money as security for the costs of an appeal.²

(g) An order transferring a case from the Court of the Agent to the Governor at Vizagapatam to a District Court under an erroneous assumption of jurisdiction, and an order or an application for a review of such order.³

(h) An order refusing execution of an order of the Privy Council.⁴

(i) An order refusing to set aside an award.⁵

(j) An order refusing to confirm an award made in a suit.⁶

(k) An order refusing to revoke a submission to arbitration.⁷

(l) An order for committal for contempt,⁸ or refusing to commit for contempt.⁹

(m) An order ascertaining the commission payable to the Administrator-General.¹⁰

(n) An order granting¹¹ or refusing¹² leave to institute a suit, where part of the cause of action arose within the ordinary original jurisdiction of the High Court.

(o) An order requiring a plaintiff to give security for the costs of a suit.¹³

(p) An order reversing the decision of a commissioner for taking accounts.¹⁴

(q) An order on an application for an *interim* injunction.¹⁵

(r) An order for the appointment of a Receiver.¹⁶

(s) An order refusing to allow the plaintiff to proceed in a suit against several defendants on the ground of misjoinder.¹⁷

¹ *Sabhapathi Chetti v. Narayanasami Chetti* (1901), 25 Mad., 555.

² *Vidhyapurana Thirtasami v. Vidyanidhi Thirtasami* (1901), 25 Mad., 654.

³ *Maharajah of Jeypore v. Papayamma* (1900), 23 Mad., 829.

⁴ *Hurish Chunder Chowdhry v. Kali Sundari Debia* (1882), 10 I. A., 4; 9 Cal., 482; 12 C. L. R., 511; s.c. in Court below, *In the matter of Kally Soondery Dabia* (1881), 6 Cal., 594; 7 C. L. R., 548.

⁵ *Toolesey Money Dassee v. Sudevi Dassee* (1899), 26 Cal., 361; 8 C. W. N., 347; *Campbell & Co. v. Jeshraj Giridhari Lal* (1917), 45 Cal., 502.

⁶ *Howard v. Wilson* (1878), 4 Cal., 281; 2 C. L. R., 488.

⁷ *Atlas Assurance Company v. Ahmedbhoj Habibbhoj* (1908), 34 Bom., 1; 10 Bom. L. R., 851.

⁸ *Navinahoo v. Narotamdas Candas* (1882), 7 Bom., 5.

⁹ *Mohendra Lall Mitter v. Anundo Coomar Mitter* (1897), 25 Cal., 236.

¹⁰ *Somasundaram Chetti v. Administrator-General* (1876), 1 Mad., 148.

¹¹ *Ismail (Hadjee) v. Mahomed (Hadjee)* (1874), 18 B. L. R., 91; 21 W. R. C. R., 808.

¹² *De Sousa v. Coles* (1868), 3 Mad., H. C., 384.

¹³ *Seshagiri Row v. Askur (Jung Attab Dowla (Nawab))* (1902), 26 Mad., 502; *Sonabai v. Tribhowandas Narotamdas Malvi* (1908), 32 Bom., 602; 10 Bom. L. R., 387; Act V of 1908, Sch. I, O. 25, rr. 1-3.

¹⁴ *Hirji Jina v. Narran Mulji* (1875), 12 Bom. H. C., 129.

¹⁵ *Tuljaram Row v. Alagappa Chetti* (1910), 35 Mad., 1, at p. 7.

¹⁶ *Ibid.*

¹⁷ *Ramendra Nath Roy v. Brajendra Nath Dass* (1917), 45 Cal., 111; 21 C. W. N., 794.

(t) An order interfering with a judgment of a Presidency Small Cause Court.¹

(u) An order remanding an application for sanction to prosecute.²

(v) An order rejecting an application for restoration of a case which had been dismissed for default,³ or to set aside an *ex parte* decree.⁴ An order granting such application is not appealable.⁵

(w) An order rejecting an application for judgment on admission.⁶

(x) An order relating to costs only.⁷

(y) An order that the applicant could not avail himself of the benefit of section 19 of the Indian Arbitration Act (IX of 1899).⁸

(z) An order dismissing a summons to show cause why leave granted under clause 12 of the Letters-Patent⁹ should not be rescinded.¹⁰

(aa) An order setting aside an abatement of a suit.¹¹

(bb) Where the Judge omitted to decide the case on its merits when giving leave to withdraw the suit.¹²

Refusing to
stay execution.

There is a difference of opinion as to whether an order refusing to stay execution is appealable. The Calcutta High Court¹³ and the Lahore High Court¹⁴ have held that such order is a "judgment." The Madras High Court¹⁵ has entertained a different view. It is submitted that the former view is correct.

There is also a difference of opinion as to whether an order refusing to enlarge the time for preferring an appeal which was time barred is appealable. In Bombay it was held that the appeal lay,¹⁶ but a different view has been accepted in Calcutta.¹⁷

Fixing date
for hearing.

It has been held¹⁸ that an order fixing a future date for the hearing is

¹ *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1913), 41 Calc., 323.

² *Budhu Lal v. Chattu Gope* (1916), 44 Calc., 804; 21 C. W. N., 269.

³ *Mathura Sundari Dasi v. Haran Chandra Saha* (1915), 43 Calc., 857; 20 C. W. N., 594.

⁴ *Kassim Ebrahim v. Johurmull Khemka* (1915), 43 Calc., 447, at p. 450.

⁵ *Johuri Mull v. Ram Kumar Chowdhuri* (1919), referred to in 49 Calc., at p. 617.

⁶ *Korammal Ramballav v. Mongilal Dalimchand* (1919), 23 C. W. N., 1017.

⁷ *Kulasekara Naicker v. Jaga dambal Annal* (1919), 42 Mad., 352.

⁸ *Joylall v. Gopiram Bhotica* (1920), 47 Calc., 611; 24 C. W. N., 612.

⁹ *Ante*, p. 47.

¹⁰ *Vaghaji Kuverji v. Camaji Bom-anji* (1904), 29 Bom., 249; 6 Bom. L. R., 958.

¹¹ *Sarat Chandra Sarkar v. Mathar Stone Company* (1921), 49 Calc., 62.

¹² *Narandas v. Shantilal* (1920), 45 Bom., 377; 22 Bom. L. R., 1012. See *Ramendra Nath Roy v. Brojendra Nath Das* (1917), 45 Calc., 111; 21 C. W. N., 794; *Behari Lal Shaha v. Jnanendra Nath Bhattacharjee* (1917), 21 C. W. N., 921.

¹³ *Brij Coomaree (Mussamut) v. Ramrick Doss* (1901), 5 C. W. N., 781. This was an application to stay the issue of probate and for discharge of the Receiver.

¹⁴ *Gokal Chand v. Sanwal Das* (1919), 2 Lahore L. J., 32.

¹⁵ *Durga Prasada Nayadu (Srimantu Raja Yarlagaadda) v. Mallikarjuna Prasada Nayadu (Srimantu Raja Yarlagaadda)* (1901), 24 Mad., 358.

¹⁶ *Ramchandra Gangadhar v. Mahadev Moreshwar* (1917), 42 Bom., 260.

¹⁷ *Gobinda Lal Das v. Shiba Das Chatterjee* (1906), 33 Calc., 1323.

¹⁸ *R. v. R.* (1890), 14 Mad., 88.

appealable under clause 15, but it is submitted that such order is not a "judgment" within the meaning of the clause.

It has been held in Madras that orders issuing,¹ or refusing² to issue, Order for a commission for the examination of witnesses are appealable. A different Commission, and, it is submitted, a better view has been held in Bombay³ and Calcutta.⁴

The following are not "judgments" within the meaning of clause 15 of the Letters-Patent:—

- (a) A refusal to order security for costs.⁵
- (b) An order requiring security as a condition of leave to defend.⁶
- (c) An order directing a Receiver to advance money to a guardian for a suit.⁷
- (d) An order refusing leave to appeal *in forma pauperis*.⁸
- (e) An order refusing to exercise discretionary power under section 25 of the Small Causes Act, 1887 (*post*, p. 275).⁹
- (f) An order that a writ of *mandamus* should issue.¹⁰
- (g) An order granting¹¹ or refusing¹² a certificate that a case is a proper one for appeal to the Privy Council, or setting aside such appeal on the ground that security for costs had not been furnished.¹³
- (h) An order dismissing an application for a review.¹⁴

¹ *Veerabadran Chetty v. Nataraja Desikar* (1904), 28 Mad., 28.

² *Maruthamuthu Pillai v. Krishnamachariar* (1906), 30 Mad., 143.

³ *Miya Mahomed v. Zorabi* (1909), 11 Bom. L. R., 241.

⁴ *Toremull Dilsook Roy v. Kunjhall Monohar Dass*, Appeal minute book, December 2nd, 1919.

⁵ *Mohabir Prosad Singh v. Adhikari Kunwar* (1894), 21 Calc., 473.

⁶ *Sukhlal Chundermull v. Eastern Bank, Ltd.* (1915), 42 Calc., 735. See Act V of 1908 (Civil Procedure), Sch. I, O. 37, r. 2.

⁷ *Kuppusami Chetti v. Rathnavelu Chetti* (1901), 24 Mad., 511.

⁸ *Appasami Pillai v. Somasundra Mudaliar* (1902), 26 Mad., 437; *Banno Bibi v. Mehdi Husain* (1889), 11 All., 375; *In re Rajagopal* (1886), 9 Mad., 447. The last two of these decisions were based upon grounds which under s. 104 of the Civil Procedure Code (Act V of 1908) are not now applicable: see *post*, pp. 346, 347.

⁹ *Puthukudi Abdu v. Puvakka Kunhikutti* (1904), 27 Mad., 340.

¹⁰ *Justices of the Peace for Calcutta v. Oriental Gas Company* (1872), 8 B. L. R., 433. A writ of *mandamus* does not now issue (Act I of 1877, s. 50). Its place has been taken by

an order under the Specific Relief Act, 1877 (Act I of 1877), s. 45 (*ante*, pp. 23, 24).

¹¹ *Luif Ali Khan v. Asgur Reza* (1890), 17 Calc., 455; *Mowla Buksh v. Kishen Pertab* (1875), 1 Calc., 102; 24 W. R. C. R., 150; *Amirunessa (Mussamut) v. Behary Loll (Buboo)* (1876), 25 W. R. C. R., 529.

¹² *Manly v. Patterson* (1881), 7 Calc., 339; 9 C. L. R., 166.

¹³ *Kishen Pershad Panday v. Tiluckdhari Lall* (1890), 18 Calc., 182.

¹⁴ *Kailash Chandra Samadar v. Rebat Mohan Ray Chowdhry* (1917), 21 C. W. N., 652; *Aubhoy Churn Mohunt v. Shamont Lochun Mohunt* (1889), 16 Calc., 788; *Raku Bibi v. Khaja Mahomed Musa Khan* (1869), 4 B. L. R. A. C., 10; s.c. *Rughoo Bibee (Mussamut) v. Noor Jehan Begum*, 12 W. R. C. R., 459; *Mulji Virji v. Bangabashi Saha* (1905), 9 C. W. N., 502. In *Achaya v. Ratnavelu* (1885), 9 Mad., 253, and in *Bombay and Persia S.N. Co. v. S.S. Zuari* (1887), 12 Bom., 171, the decision was based on the ground that s. 15 of the Letters-Patent was controlled by s. 629 of the then Civil Procedure Code (Act XIV of 1882); cf. Act V of 1908 (Civil Procedure), Sch. I, O. 47, rr. 7, 9.

- (i) Settlement of issues.¹
- (j) An order refusing to frame an issue.²
- (k) An order under Sch. I, Order 41, rule 28, of Act V of 1908, remanding the case for the trial of certain issues.³
- (l) An order adding a party to a suit.⁴
- (m) An order refusing to stay proceedings on account of non-payment of costs.⁵
- (n) An order refusing an application by a defendant to file a written statement.⁶
- (o) A decision in a Land Acquisition Act⁷ appeal.⁸
- (p) An order granting sanction for prosecution under section 195 of the Code of Criminal Procedure (Act V of 1908).⁹
- (q) A decree made in accordance with an award.¹⁰
- (r) An order refusing to restrain the defendant from prosecuting a suit in a foreign Court.¹¹
- (s) An order requiring directions under rules 180 and 181 of the Bombay High Court Rules (relating to third party notices).¹²
- (t) An order for the transfer of a suit to the High Court under clause 18 of the Letters-Patent.¹³
- (u) An order dismissing an application to take a plaint off the file on the ground that the suit was not for the benefit of the lunatic plaintiff.¹⁴

Appeal from remand.

It has been held that there is no appeal from a final decree passed by a single Judge on appeal from an order of remand.¹⁵ This view was taken having regard to the terms of the then Civil Procedure Code. It is submitted that there is an appeal under clause 15 of the Letters-Patent, as

¹ *Ebrahim v. Fuckrunnissa Begum* (1878), 4 Calo., 581; 8 C. L. R., 811.

² *Tuljaram Row v. Alagappa Chettiar* (1910), 35 Mad., 1.

³ *Kalikeristo Paul v. Ramchunder Nag* (1881), 8 Calo., 147; 9 C. L. R., 461; *Bara Estate, Limited v. Anup Chandra* (1917), 2 Pat. L. J., 668; [1917 Pat.], 842. See, however, *Gopinath Pati v. Moheshwar Pradhan* (1908), 35 Calo., 1096; *Venganayyan v. Ramasami Ayyan* (1896), 19 Mad., 422.

⁴ See *Upendra Krishna Deb Bahadur (Kumara) v. Nabin Krishna Bose* (1869), 8 B. L. R. O. C., 113, at pp. 117, 118.

⁵ Cf. *Chitto Sheikh v. Mussur Hossein (Kasee)* (1864), 2 Hyde, 212.

⁶ *Muralidhar Chamarla v. Dalmia* (1917), 45 Calo., 818.

⁷ Act I of 1894.

⁸ *Manavikraman Tirumalpad v. Collector of the Nilgiris* (1918), 41 Mad., 948. Cf. *Rangoon Botatoung Company v. Collector, Rangoon* (1912),

39 I. A., 197; 40 Calo., 21; 16 C. W. N., 961; 14 Bom. L. R., 838; *Special Officer, Salsette Building Sites v. Dosabhai Besonji* (1912), 37 Bom., 506; 14 Bom. L. R., 1194, upheld on appeal (1913), 17 C. W. N., 421.

⁹ *Ramjas v. Mahadeo Prasad* (1916), 39 All., 147. See, however, *Venkatagiri Ayyar v. Firm* (1919), 43 Mad., 361.

¹⁰ *Shibkristo Daw & Co. v. Satish Chandra Dutt* (1912), 39 Calo., 822. See Act V of 1908, Sch., II, para. 16.

¹¹ *Venechand v. Lakhmichand* (1919), 44 Bom., 272; 21 Bom. L. R., 955.

¹² *Charandas v. Ohaganlal* (1920), 45 Bom., 428; 22 Bom. L. R., 1169.

¹³ *Khatisan v. Sonairam Daulatram* (1920), 47 Calo., 1104.

¹⁴ *Gour Mohan Mullick v. Noyan Manjari Dassi* (1921), 26 C. W. N., 242.

¹⁵ *Sankaran v. Raman Kutti* (1896), 20 Mad., 152.

that clause is not controlled by the provisions of section 104, and Sch. I, Order 48, rule 1, of the Civil Procedure Code (Act V of 1908), which limit the cases in which appeals lie from orders.¹

Where there is express provision in the Civil Procedure Code or in Provision that any other enactment that no appeal lies, clause 15 is controlled by such no appeal lies provision.²

"Clause 16. And We do further ordain that the said Appeal from Courts in Provinces. High Court of Judicature at [Fort William in Bengal]³ shall be a Court of Appeal from the Civil Courts of the [Bengal Division of the Presidency of Fort William]³ and from all other Courts subject to its superintendence,⁴ and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force."

As to appeals from the British Consular Court for the Persian Coast and Islands to the Bombay High Court, see Arts. 84-87 of Statutory Rules and Orders, 1907, p. 248.

As to the cases in which appeals lie, see *post*, chapters relating to the several Courts respectively.

"Clause 17. And We do further ordain that the said Jurisdiction as to infants and lunatics. High Court of Judicature at [Fort William in Bengal]³ shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the [Bengal Division of the Presidency of Fort William]⁵ as that which was vested in the said High Court immediately before the publication of these presents."

By clause 16 of the Letters-Patent of 1862, which were in force up to the time of the issuing of the Letters-Patent of 1865, the High Court of

¹ As to the cases under previous Codes of Civil Procedure, see *Hurish Chunder Chowdhry v. Kali Sundari Debta* (1882), 10 I. A., 4, at p. 17; 9 Calc., 482, at p. 494; 12 C. L. R., 511, at p. 518; *Toolsey Money Dassee v. Sudevi Dassee* (1899), 26 Calc., 861; 3 C. W. N., 347; *Chappan v. Moidin Kutti* (1898), 22 Mad., 68; *Sabhapathi Chetti v. Narayanasami Chetti* (1901), 25 Mad., 555; *contrâ*, *Banno Bibi v. Mehdi Husain* (1889), 11 All. 375; *Muhammad Naim-ul-lah Khan v. Ihsan-ul-lah Khan* (1892), 14 All., 226; decision of BENSON, J., in *Vasudeva Upadhyaya v. Visvaraja Thirathasami* (1897), 20 Mad., 407; *Achaya*

v. Ratnavelu (1885), 9 Mad., 253; *In re Rajagopal* (1886), 9 Mad., 447 (in the last two cases the above Privy Council decision was not cited); *Sonbai v. Ahmedbai Habibhai* (1872), 9 Bom. H. C., 398.

² *Shib Kristo Daw & Co. v. Satish Chandra Dutt* (1912), 89 Calc., 822.

³ For Madras: "Madras." For Bombay: "Bombay."

⁴ As to the exercise of its inherent jurisdiction, see *Bahadur Singh (Maharaj) v. Forbes* (1922), 1 Pat., 662.

⁵ For Madras: "Presidency of Madras." For Bombay: "Presidency of Bombay."

Bengal had "the like power and authority with respect to the persons and estates of infants, idiots, and lunatics, whether within or without the Bengal Division of the Presidency of Fort William, as that which was at the date of the issuing of the Letters-Patent of 1862 vested in the Supreme Court at Calcutta.

There were similar provisions in clause 16 of the Letters-Patent of 1862, granted to the High Courts at Bombay and Madras.

Clause 25 of the Charter of the Supreme Court at Calcutta, dated 25th March, 1874, was as follows: "And We do hereby authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, to appoint guardians and keepers for infants, and their estates, according to the order and course observed in that part of Great Britain called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason, by the act of God, so as to be unable to govern themselves and their estates, which We hereby authorise and empower the said Supreme Court of Judicature, at Fort William in Bengal, to inquire, hear, and determine, by inspection of the person, or by such other ways and means by which the truth can best be discovered and known."

Clause 82 of the Madras Supreme Court Charter of 1800, and clause 42 of the Bombay Supreme Court Charter of 1823, contained similar provisions.

The effect of the Calcutta Supreme Court Charter, combined with the provisions of 21 Geo. III. c. 70, s. 17, and of the Charters of the Madras and Bombay Supreme Courts was, it is submitted, to prevent suits against natives of India, who were not resident within the towns of Calcutta, Madras, and Bombay respectively, except where they had in their contracts agreed to submit to the jurisdiction.¹ It has therefore been taken that the High Courts can appoint guardians of European British subjects who are residing in the Provinces in which the High Courts have respectively jurisdiction, and can appoint such guardians in the cases of minors who are not European British subjects, provided that they reside or possess property within the limits of their respective ordinary original civil jurisdiction, viz. within the towns of Calcutta, Bombay, and Madras respectively.²

The appointment of guardians of lunatics is in a similar position.³

Guardians of
minors.

The declaration and appointment of guardians of minors in India is now provided for by the Guardians and Wards Act, 1890 (Act VIII of 1890).⁴ The High Courts of Bengal, Madras, and Bombay in the exercise of their ordinary original civil jurisdiction have powers under that Act, and even when they are acting under the above powers under their Letters-Patent they are guided by the principles contained in that Act.⁵

¹ See *ante*, p. 18.

² See *In re Shannon* (1870), 2 N. W. P., 79. *In the matter of Srish Chunder Singh* (1898), 21 Cal., 206; *Besant v. Narayaniah* (1914), 41 I. A., 814; 38 Mad., 807; 18 O. W. N., 1089; 16 Bom. L. R., 625.

³ See *Jayndha Kuar v. Court of Wards* (1881), 4 All., 159.

⁴ *Post*, chap. xxxii.

⁵ *In the matter of Srish Chunder Singh* (1898), 21 Cal., 206, at p. 211. See *In re Hari Narain Das* (1922), 50 Cal., 141.

Those High Courts can also in exercise of their powers as Courts of Original Jurisdiction provide for the maintenance of minors,¹ the management and disposition of their property,² and their marriage.³

The jurisdiction of the High Courts is not affected by the Acts establishing Courts of Wards.⁴

In cases of lunatics subject to the jurisdiction of the High Courts of Lunatics, Bengal, Madras, and Bombay respectively,⁵ those Courts have also powers under the Indian Lunacy Act, 1912 (Act IV of 1912), to order an Indian Lunacy inquisition,⁶ to direct a District Court to make an inquisition,⁷ and to provide for the custody of lunatics and the management of their estates.⁸ Indian Lunacy Act, 1912.

These powers are not affected by the Madras Court of Wards Act, 1902.⁹

“Clause 18. And We do further ordain that the Court Insolvent for relief of insolvent debtors at [Calcutta]¹⁰ shall be held Court. before one of the Judges of the said High Court of Judicature at [Fort William in Bengal]¹¹ and the said High Court, and any such Judge thereof, shall have and exercise, within the [Bengal Division of the Presidency of Fort William]¹² such powers and authorities with respect to original and appellate jurisdiction, and otherwise, as are constituted by the laws relating to insolvent debtors in India.”

As to the present law of insolvency, see Act V of 1920 (Provincial Insolvency), *post*, pp. 431–435, and Act III of 1909 (Insolvency, Presidency towns), *post*, pp. 428–431.

“Clause 19. And We do further ordain that, with respect Law to be administered in the exercise of ordinary original civil jurisdiction. to the law or equity to be applied to each case coming before the said High Court of Judicature at [Fort William in Bengal]¹³ in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have

¹ See Trevelyan on “Minors” (5th edn.), pp. 215–221.

² *Ibid.* chap. xxiv.

³ *Ibid.* p. 248.

⁴ See Ben. Act IX of 1879, s. 4; Mad. Act I of 1902, s. 3.

⁵ This apparently applies to a case where the lunatic is resident or has property within the ordinary original civil jurisdiction of the High Court, as in cases outside the Presidency towns the District Courts have jurisdiction (Act IV of 1912, s. 62). Such Courts have no jurisdiction if the

lunatic is within the jurisdiction of the High Court (*ibid.*).

⁶ S. 38.

⁷ S. 43.

⁸ Ss. 46 to 58.

⁹ Mad. Act I of 1902, s. 3.

¹⁰ For Madras: “Madras.” For Bombay: “Bombay.”

¹¹ *Ibid.*

¹² For Madras: “Presidency of Madras.” For Bombay: “Presidency of Bombay.”

¹³ For Madras: “Madras.” For Bombay: “Bombay.”

been applied by the said High Court to such case if these Letters-Patent had not issued."

As to this, now see the Government of India Act, 1915 (5, 6 Geo. V. c. 61), s. 112, *ante*, p. 82.

Clause 18 of the Letters-Patent issued to the Bengal High Court in 1862 ordained that with respect to the law or equity to be applied to each case coming before that Court in the exercise of its ordinary original civil jurisdiction, such law or equity shall (until otherwise provided) be the law or equity which would have been applied by the Supreme Court at Calcutta to such case if those Letters-Patent had not issued.

The only enactment on the subject of what law the Calcutta Supreme Court was required to administer is to be found in s. 17 of 21 Geo. III. c. 70,¹ by which "their inheritance and succession to lands, rents, and goods, and all matters of contract or dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentus² by the laws and usages of Gentus; and where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant."

The law to be administered by the High Court of Madras and Bombay in the exercise of their ordinary original civil jurisdiction was defined in similar terms, in the case of Madras by 37 Geo. III. c. 142, s. 18, read with 39, 40 Geo. III. c. 79, s. 5, and the Letters-Patent of 1862, s. 18, and the Letters-patent of 1865, s. 19, and in the case of the High Court of Bombay by 37 Geo. III. c. 142, s. 18, read with 4 Geo. IV. s. 71, s. 9,³ and the Letters-Patent of 1862, clause 18, and the Letters-Patent of 1865, clause 19. The above mentioned were all repealed by the Government of India Act, 1915 (5, 6 Geo. V. c. 61).⁴

There was in the above enactments no express reference to questions of adoption, marriage, caste, or religious usages or institutions, but the Supreme Courts and High Courts have always dealt with such questions according to the personal law of the individuals concerned.⁵

It was stated in Morley's Digest,⁶ in 1850, as follows: "The law which now obtains in the Supreme Courts at the three Presidencies may be classed under seven distinct heads—

"(1) The Common law as it prevailed in England in the year 1726,⁷ and which has not subsequently been altered by statutes especially extending to India, or by the Acts of the Legislative Council of India.

"(2) The Statute law which prevailed in England in 1726, and which has not subsequently been altered by statutes especially extending to India, or by the Acts of the Legislative Council of India.

¹ Repealed by 5, 6 Geo. V. c. 61, s. 180.

² Hindus.

³ See *Mathura Naikin v. Esu Naikin* (1880), 4 Bom., 545, at p. 556.

⁴ *Ante*, chap. ii.

⁵ See *In re Kahandas Narrandas*

(1880), 5 Bom., 154, at pp. 166, 167, 170.

⁶ Introduction, p. xxii.

⁷ The date of the establishment of the Mayor's Courts in Calcutta, Madras, and Bombay.

"(3) The Statute law expressly¹ extending to India, which has been enacted since 1726, and has not since been repealed, and the Statutes which have been extended to India by the Acts of the Legislative Council of India.

"(4) The Civil law as it obtains in the Ecclesiastical and Admiralty Courts in England.

"(5) Regulations made by the Governor-General in Council, and the Governors in Council previously to the 3rd and 4th William IV. c. 85, and registered in the Supreme Courts, and the Acts of the Legislative Council of India made under the 3rd and 4th William IV. c. 85.

"(6) The Hindu law in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Hindu is a defendant.²

"(7) The Mahomedan law in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Mahomedan is a defendant."

It might be now added that the High Courts also administer the law to be found in the enactments of the several past and existing Indian Legislative Councils, and in cases for which there is no appropriate Statute law and the Hindu or Mahomedan laws are inapplicable they administer the English Common law so far as it is applicable to India.

"Clause 20. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at [Fort William in Bengal]³ in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein."

As to the law applicable to the local Courts, see *post*, chapters relating to those Courts respectively.

"Clause 21. And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at [Fort William in Bengal]⁴ to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience which the Court in which the proceedings in such

¹ To this should be added "or by necessary implication": *Bank of Hindustan v. Premchand Raichand* (1868), 5 Bom. H. C. O. C., 88, at p. 91.

² The Indian Contract Act (IX of 1872) supersedes the Hindu and

Mahomedan law in this respect: see *Madhub Ohunder Poramanick v. Rajcomar Doss* (1874), 14 B. L. R., 76; 22 W. R. C. R., 870.

³ For *Madras*: "Madras." For *Bombay*: "Bombay."

⁴ *Ibid.*

case were originally instituted ought to have applied to such case."

Exercise of Jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

Judges may sit in other places by way of circuit or special commission.

"Clause 31. And We do further ordain that whenever it shall appear to the Governor-General in Council convenient that the jurisdiction and power by these Our Letters-Patent, or by the recited Act, vested in the said High Court of Judicature at [Fort William in Bengal]¹ should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceeding in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India."

Admiralty and Vice-Admiralty Jurisdiction.

Admiralty jurisdiction

"Clause 32. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal]¹ shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of a Colonial Court of Admiralty,² and also such jurisdiction for the trial and adjudication of prize causes, and other maritime questions arising in India, as may now be exercised by the said High Court."

Under clause 31 of the Letters-Patent of 1862 the High Courts of Bengal, Madras, and Bombay were vested with jurisdiction "as may now be exercised by the said Supreme Court as a Court of Admiralty or by any Judge of the said Court as Commissary of the Vice-Admiralty Court, and also such jurisdiction for the trial and adjudication of prize causes, and other maritime questions arising in India as is now vested in any Commissioner or Commissioners appointed by Us or our predecessors under the powers given by an Act passed in the session of Parliament held in the 39th and 40th year of his late Majesty King George the Third,³ for establishing further regulations for the government of the British territories in India and the better administration of justice within the same."

¹ For *Madras*: "Madras." For *Bombay*: "Bombay."

² Now repealed by 5, 6 Geo. V. c. 61, s. 62, Sch. IV.

³ 53, 54 Vict. c. 27, s. 2 (8).

The 26th clause of the charter of the Supreme Court of Bengal was as follows:—

"And it is Our further will and pleasure, and We do hereby grant, ^{Supreme Court to be a Court of Admiralty.} ordain, establish, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall be a Court of Admiralty, in and for the said Provinces, countries or districts, of Bengal, Bihar, and Orissa, and all other territories and islands adjacent thereunto, and which now are or ought to be dependent thereupon; and We do hereby commit and grant to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to take cognizance of, hear, examine, ^{Their power, and in what causes to proceed.} try, and determine, all causes, civil and maritime and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships, and all matters and contracts, which in any manner whatsoever relate to freight or money due for ships hired and let out, transport-money, maritime usury or bottomry,¹ or to extortions, trespasses, injuries, complaints, demands, and matters, civil and maritime, whatsoever, between merchants, owners, and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid, or between others, contracted, done, had, or commenced, in, upon, or by the sea,² or public rivers, or ports, creeks, harbours and places overflowed, within the ebbing and flowing of the sea, and high-water mark, within, about, and throughout the said three Provinces, countries, or districts, of Bengal, Behar, and Orissa, and all the said territories or islands ^{Extent of jurisdiction which is to be exercised as in England, without the strict formalities of law.} adjacent thereunto, and dependent thereupon, the cognizance whereof doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies, annexed and connexed causes whatsoever, and to proceed summarily therein with all possible despatch, according to the course of our Admiralty of that part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact, and the equity of the case."

The 41st clause of the Charter of the Madras Supreme Court, and the 53rd clause of the Charter of the Bombay Supreme Court were in similar terms.

As to the rules governing the Admiralty jurisdiction of the Bombay High Court, see *Freeman v. S.S. Calanda* (1922), 24 Bom. L. R., 1167.

As to enactments giving special jurisdiction to the Courts in Admiralty matters, see *post*, chap. xxxiii.

As to the criminal jurisdiction in Admiralty matters given to the High Courts by their Letters-Patent, see clause 33 of such Letters.

"Clause 34. And We do further ordain that the said ^{Testamentary and intestate jurisdiction. Matrimonial jurisdiction.} High Court of Judicature at [Fort William in Bengal]³ shall have the like power and authority as that which may now be lawfully exercised by the said High Court ["except within

¹ The Madras and Bombay Charters say "by the high seas." add here "or respondentia."

² For Madras: "Madras." For Bombay: "Bombay."

³ The Madras and Bombay Charters

the limits of the jurisdiction for that purpose of any other High Court established by her Majesty's Letters-Patent¹ in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the said [Bengal Division]² [“subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established”].”³

The jurisdiction of the High Court of Bombay to grant probates and letters of administration is not affected by Act V of 1872, which asserts that the Court has no jurisdiction in Sindh.⁴

“Provided always that nothing in these Letters-Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates, and letters of administration.”

Clause 84 of the Letters-Patent of 1862 gave to the High Court the powers then possessed by the Supreme Courts.

By clause 22 of the Charter of the Supreme Court of Bengal that Court exercised ecclesiastical jurisdiction in Bengal, Bihar, and Orissa over what were then called British subjects,⁵ as was exercised in the diocese of London. It could grant probates of last wills and letters of administration of the goods of British subjects,⁶ dying within Bengal, Behar, and Orissa.

There were similar provisions in the charters of the Supreme Courts of Madras and Bombay.

Although testamentary jurisdiction was first given to the Supreme Courts by their original Charters as a branch of ecclesiastical jurisdiction, in its progress of development the ecclesiastical origin of such jurisdiction has been completely discarded, and the Legislature has gradually evolved an independent system of its own. In the case of High Courts, the testamentary jurisdiction which the Letters-Patent purport to confer

¹ ^{a-b}. The words within brackets refer to the High Court for the North-Western Provinces, which was established shortly after these Letters-Patent were published. These words are not to be found in the Madras and Bombay Letters-Patent.

^a For *Bombay*: “Presidency of Bombay.” For *Madras*: “Presidency

of Madras.”

^{b-b}. Omitted in Bombay and Madras Letters-Patent; see above note.

⁴ Act V of 1872, as amended by Act XX of 1872.

⁵ This expression was equivalent to what are now called “European British subjects.”

upon them is not given as a branch of ecclesiastical jurisdiction, and is not made dependent upon the law administered by English Courts.¹

Where a deceased person of any race, wherever he may die,² leaves assets within the limits of the ordinary original civil jurisdiction of one of the High Courts of Bengal, Madras, or Bombay, such High Court grants probate or letters of administration by authority of the above clause.³

By the same authority such High Courts can grant probate or letters of administration of the estates of European British subjects, dying within the Provinces respectively subject to their jurisdiction.⁴

As to the grant of probate or letters of administration in other cases, see *post*, chapter xxxi.

A grant of probate or letters of administration by a High Court extends, unless otherwise ordered, throughout British India.⁵

As to the recognition of such probates and letters in the United Kingdom, see 55, 56 Vict. c. 6.

“Clause 35. And We do further ordain that the said High Court of Judicature at [Fort William in Bengal]⁶ shall have jurisdiction within the [Bengal Division of the Presidency of Fort William]⁷ in matters matrimonial between Our subjects professing the Christian religion: Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.”

Matrimonial jurisdiction.

The matrimonial jurisdiction of the High Courts is now exercised under the Indian Divorce Act, 1869 (Act IV of 1869) (*post*, chap. xli), and by that Act only.⁸

The jurisdiction exercised by the High Court in matrimonial matters previous to the coming into force of the Indian Divorce Act⁹ was confined to matters between British subjects confessing the Christian religion.¹⁰

¹ *Kurratulain Bahadur (Mirza) v. Nashat-ud-dowla (Nawab)* (1905), 32 I. A., 244; 33 Calc., 116; 9 C. W. N., 988; 7 Bom. L. R., 876.

² *In the goods of Tarachund Coondoo Chowdhry* (1865), Bourke, Test 3; 1 L. J. (N.S.), 10.

³ As to the growth of the practice of the Supreme Court to issue probate of the wills of Hindus, see *Kurratulain Bahadur (Mirza) v. Nashat-ud-dowla (Nawab)* (1905), 32 I. A., 244, at pp. 257, 258; 33 Calc., 116, at p. 129; 9 C. W. N., 988, at p. 950; 7 Bom. L. R., 876; *In the matter of Learmouth* (1900), 24 Mad. 120; Henderson's "Tagore Lectures," 1887,

pp. 312, 313.

⁴ See *In the goods of Reed* (1866), 1 Ind. Jur. N. S., 20.

⁵ Act XIII of 1875, s. 2; Act V of 1881, s. 59. See *Lish v. Lish*, [1923 Pat.], 127.

⁶ For Madras: "Madras." For Bombay: "Bombay."

⁷ For Madras: "Presidency of Madras." For Bombay: "Presidency of Bombay."

⁸ *Jogendra Nath Banerjee v. Elisabeth Banerjee* (1898), 3 C. W. N., 250.

⁹ Act IV of 1869.

¹⁰ *Nusserwanjee Wadia v. Eleonora Wadia* (1913), 38 Bom., 125; 15 Bom. L. R., 593.

**Marriage
licences.**

The above High Courts by virtue of their ecclesiastical jurisdiction issue marriage licences.¹ This jurisdiction was retained by the Indian Divorce Act (IV of 1869), s. 2.

**Single Judges
and Division
Courts.**

"Clause 36. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at [Fort William in Bengal],² in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, in pursuance of section 108 of the Government of India Act, 1915;³ and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail."⁴

The latter part of clause 36 has not been superseded in civil cases by section 98⁵ of the Code of Civil Procedure (Act V of 1908).⁶

**Regulation of
civil proceed-
ings.**

"Clause 37. And We do further ordain that it shall be lawful for the said High Court of Judicature at [Fort William in Bengal],⁷ from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, Testamentary, Intestate, and Matrimonial Jurisdictions respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being

¹ See Belchambers' R. and O., p. 312; Hechle's R. and O. (2nd edn.), 445.

² For *Madras*: "Madras." For *Bombay*: "Bombay."

³ Amending Letters-Patent, 1919, cl. 1 (c). Cf. *Oodey Koowur (Mussumat) v. Ladoo (Mussumat)* (1870), 13 M. I. A., 585; 6 B. L. R., 283.

⁴ See *In the matter of Chunder Kant Bhattacharjee* (1867), B. L. R., Supp. vol. App. 43; 7 W. R. C. R., 277.

⁵ *Post*, p. 342.

⁶ *Bhaidas Shivdas v. Gulab (Bai)* (1921), 48 I. A., 181; 45 Bom., 718; 25 C. W. N., 605; 23 Bom. L. R., 628; *Lachman Singh v. Ram Lagan Singh* (1903), 26 All., 10; *Roop Lal v. Lakshmi Doss* (1905), 29 Mad., 1, at p. 24. As to the view of the Bombay High Court on this subject, see *Bhuta v. Lakadu Dhansing* (1918), 43 Bom., 438; 21 Bom. L. R., 157; *Appaji Bhivray v. Shivlal Khubchand* (1879), 3 Bom., 204.

⁷ For *Madras*: "Madras." For *Bombay*: "Bombay."

Act No. VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India." ¹

This clause does not give to the High Court power to delegate the performance of a judicial act.²

As to rules under the Code of Civil Procedure, see Act V of 1908, ss. 122-181.

"Clause 39. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final³ judgment, decree, or order of the said High Court of Judicature at [Fort William in Bengal]⁴ made on appeal,⁵ and from any final judgment, decree, or order made in the exercise of original jurisdiction by a majority of the full number of Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council. Subject always to such rules and orders as are now in force, or may, from time to time, be made, respecting appeals to Ourselves in Council from the Courts of the said Presidency; except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of our Privy Council, hereafter make in that behalf."

Power to
appeal to King
in Council.

This clause has no application to an order rejecting an application for

¹ The present Code of Civil Procedure is Act V of 1908.

² See *Laliteshwar Singh v. Rameshwar Singh* (1907), 84 Cal., 619; 11 C. W. N., 649; *ante*, p. 48.

³ Cf. *ante*, pp. 51-56.

⁴ For *Madras*: "Madras." For

Bombay: "Bombay."

⁵ An order rejecting an application to amend a decree is not "made on appeal": *Sunder Koer v. Chandishwar Prosad Singh* (1908), 80 Cal., 679.

review¹ or to orders made in the disciplinary jurisdiction of the Court,² or to interlocutory orders.³ It applies to orders passed in the exercise of revisional jurisdiction,⁴ if they are final, but not otherwise.⁵

An appeal lies even though the Judges differed.⁶

As to the powers of a Judge of a High Court when admitting an appeal under this clause, see *In the matter of Feda Hossein* (1876), 1 Calc., 431, at p. 448.

It has been held that an appeal does not lie to His Majesty in Council from a judgment or order made by a Judge of the High Court until it has been subjected to an appeal under clause 15⁷ of the Letters-Patent.⁸

As to appeals to His Majesty in Council under the Colonial Courts of Admiralty Act, 1890,⁹ see *post*, pp. 408, 409.

As to appeals to His Majesty in Council under the Civil Procedure Code,¹⁰ see *post*, chap. xxx.

As to appeals with special leave of His Majesty in Council, see *post*, pp. 384, 385.

An appeal may be from an order refusing to make an order under section 45 of the Specific Relief Act, 1877 (Act I of 1877).¹¹

Persia.

Appeals lie to His Majesty in Council from the Bombay High Court on Appeals from the Consular Court for the Persian Coast and islands.¹²

Appeal from
interlocutory
judgment.

“Clause 40. And We do further ordain that it shall be lawful for the said High Court of Judicature at [Fort William in Bengal]¹³ at its discretion, on the motion, or if the said High Court is not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court in any such proceeding as aforesaid, not being of Criminal jurisdiction, to

¹ *Enaet Hossein (Raja Syud) v. Roushun Jehan* (1868), 1 B. L. R. F. B., 1; 10 W. R. F. B., 1.

² *In the matter of an attorney* (1914), 41 Calc., 734; *Ganesh S. Dandvate v. Government Pleader* (1907), 32 Bom., 106; 10 Bom. L. R., 21.

³ *Gangappa Revanshidappa v. Gangappa Malleshappa* (1914), 38 Bom., 421; 16 Bom. L. R., 195; *Chundi Dutt Jha v. Pudmanund Singh* (1895), 22 Calc., 928. See clause 40, above.

⁴ *Harish Chandra Acharja v. Nawab Bahadur of Murshidabad* (1911), 15 C. W. N., 879; *Secretary of State v. British India Steam Navigation Company* (1911), 15 C. W. N.,

848.

⁵ See *Sakan Sing (Babu) v. Gopal Chandra Neogi* (1904), 8 C. W. N., 296.

⁶ *In the matter of Court of Wards* (1871), 7 B. L. R., 730; 16 W. R. C. R., 191.

⁷ *Ante*, p. 50.

⁸ *Sonbai v. Ahmedbhai Habibhai* (1872), 9 Bom. H. C., 398.

⁹ 58, 54 Vict. c. 27, s. 6.

¹⁰ Act V of 1908.

¹¹ *Alcock Ashdown Company v. Chief Revenue Authority, Bombay* (1921), 23 Bom. L. R., 1132.

¹² Stat. R. & O., 1907, pp. 243, 256.

¹³ For Madras: “Madras.” For Bombay: “Bombay.”

grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed respecting appeals from final judgments, decrees, orders, and sentences."

It has been held in Allahabad that clause 31 of the Letters-Patent of the High Court, corresponding to clause 40 of the Bengal Letters-Patent, was repealed by Act VI of 1874.¹

"Clause 42. And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree of the said High Court of Judicature at [Fort William in Bengal]² to Us, Our heirs, or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the Seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court or by any of such Judges, for or against the judgment or determination appealed against. And We do further ordain that the said High Court shall in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Rules as to transmission of copies of evidence and other documents.

"Clause 43. And it is Our further will and pleasure that the said High Court of Judicature at [Fort William in Bengal]² shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

High Court to comply with requisitions of Government for records, etc.

"Clause 44. And We do further ordain and declare that all the provisions of these Our Letters-Patent are subject to the legislative powers of the Governor-General in Legislative

Powers of Indian Legislature preserved.

¹ *Tetley v. Jai Shankar* (1878), 1 All., 726.

² For Madras: "Madras." For Bombay: "Bombay."

Council and also of the Governor-General in Council under section 71 of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section 72 of that Act, and may be in all respects amended and altered thereby.”¹

¹ Amending Letters-Patent, 1919, 172, at pp. 177, 178; 3 C. L. R., 197, cl. 1 (*d*). See *Queen v. Burah* (1878), at p. 202, *ante*, p. 31.
5 I. A., 178, at pp. 190, 191; 24 Calc.,

CHAPTER IV.

LETTERS-PATENT OF THE HIGH COURT AT ALLAHABAD.¹

LETTERS-PATENT establishing a High Court for the North-Western Provinces, now called the High Court of Judicature at Allahabad,¹ were issued in 1866.

The first clause of such Letters-Patent established a High Court for the North-Western Provinces of the Presidency of Fort William.² The second clause provides that until further or other provision shall be made the Court shall consist of a Chief Justice and five Judges,³ and names the first Chief Justice and Judges of the Court. Establishment of the Court.

The third clause provides for declarations to be made by the Judges.⁴ Declaration by Judges.

The fourth clause provides for a seal. It is in terms similar to clause 6 of the Bengal High Court Letters-Patent of 1865.⁵ Seal.

The fifth clause provides that writs, etc., shall run in the name of the Crown. It is in terms similar to clause 7 of the Bengal High Court Letters-Patent of 1865.⁶ Writs, etc. to issue in name of Crown and under seal.

The sixth clause provides for the appointment of officers. It is in terms similar to clause 8 of the Bengal Letters-Patent of 1865,⁷ except that the appointments have to be confirmed by the Governor instead of by the Governor-General in Council. Appointments.

¹ 5, 6 Geo. V. c. 61, s. 101 (5). Amending Letters-Patent, 1919, cl. 1 (c).

² The powers of the High Court have been extended to the district of Dehra Dhun (except Jaunsar Bazar) by Act XXI of 1871, s. 2.

³ When the number falls short of that number, the power of the remaining judges is not affected: *Lal*

Singh v. Ghansham Singh (1897), 9 All., 625. The appointment of a sixth judge by Letters-Patent is not illegal: *Emperor v. Ghure* (1914), 36 All., 168.

⁴ See *ante*, p. 35.

⁵ *Ante*, p. 35. See Amending Letters-Patent, 1919, cl. 1 (c).

⁶ *Ante*, p. 35.

⁷ *Ante*, pp. 35, 36.

Admission of advocates, etc.

The seventh clause¹ provides for the admission of advocates, vakils, and attorneys. It is in terms similar to clause 9 of the Bengal High Court Letters-Patent of 1865.²

Rules for qualification, etc. of advocates, etc.

The eighth clause gives to the Court power to make rules for the qualification and admission of advocates, vakils, and attorneys. It is in terms similar to clause 10 of the Bengal High Court Letters-Patent.³

Extraordinary original civil jurisdiction.

"Clause 9. And We do further ordain that the said High Court of Judicature for the North-Western Provinces shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reason for so doing being recorded on the proceedings of the said High Court."⁴

Appeal from judgment of single Judge or where Judges are equally divided in opinion.

Clause 10 (as to appeals from the judgments of a single Judge, or from the judgment of two or more Judges where they are equally divided in opinion) is similar to clause 15 of the Bengal High Court Letters-Patent of 1865.⁵

Appeal from Civil Courts in the Provinces.

Clause 11 (as to an appeal from Courts in the Provinces) is in terms similar to clause 16 of the Bengal High Court Letters-Patent of 1865.⁶

As to infants and lunatics.

"Clause 12.⁷ And We do further ordain that the said High Court of Judicature at Allahabad shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the said territory, as that which is exercised in the Bengal Division of the Presidency of Fort William by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force."⁸

The High Court at Allahabad has no original jurisdiction in respect of the persons or estates of minors or lunatics who are natives of India.⁹

As to the jurisdiction of the High Court in references from Ajmere, see *post*, pp. 102, 108.

¹ See Amending Letters-Patent, 1919, cl. 1 (*d*).

² *Ante*, p. 36.

³ *Ante*, pp. 36, 37.

⁴ Cf. *ante*, p. 61.

⁵ See *ante*, p. 50; Amending Letters-Patent, 1919, cl. 1 (*g*).

⁶ *Ante*, p. 57; Amending Letters-Patent, 1919, cl. 1 (*h*).

⁷ As amended by Letters-Patent, 1919, cl. 1 (*h*).

⁸ See *ante*, pp. 57-59.

⁹ Cf. *Jaundha Kuar v. Court of Wards* (1881), 4 All., 159, *ante*, p. 58.

"Clause 13. And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Allahabad, in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein."¹

Clause 14, which provides for the law to be administered by the High Court of the North-Western Provinces in the exercise of its appellate jurisdiction is in terms similar to those of clause 21 of the Bengal High Court Letters-Patent of 1865.²

Clauses 15 to 28, as amended by Letters-Patent, 1919, deal with the criminal jurisdiction of the Court.

"Clause 24. And We do further ordain that whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces,³ subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters-Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of any Sudder Dewany Adawlut or the Sudder Nizamut Adawlut of the said territories,⁴ other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

"Clause 25. And We do further ordain that the said High Court of Judicature for the North-Western Provinces, shall have the like power and authority as that which is now lawfully exercised within the said territories by the said High Court of Judicature at Fort William in Bengal,⁵ in relation to the granting of probate of last wills and testaments, and letters of administration of the goods, chattels, credits, and

¹ Cf. *ante*, p. 61. The words "good conscience" are to be found in clause 20 of the Bengal Letters-Patent of 1865, but the omission of these words in the Letters-Patent of the North-Western Provinces (cl. 13), and of Bihar and Orissa (cl. 13, *post*,

p. 79), makes no difference.

² *Ante*, pp. 61, 62.

³ Now the Governor of the United Provinces.

⁴ Amending Letters-Patent of 1919, cl. 1 (*h*).

⁵ See *ante*, pp. 64, 65.

all other effects whatsoever of persons dying intestate; and that the jurisdiction of the last-mentioned High Court in relation thereto shall cease from the date of the publication of these presents. Provided always that any proceedings already commenced in relation to any of the matters afore-said in the said last-mentioned High Court shall continue as if these presents had not been issued: Provided also that nothing in these Letters-Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probate and letters of administration.”¹

As to the power to issue probates and letters of administration, see *post*, chap. xxxi.

Matrimonial jurisdiction.

Clause 26, which deals with the matrimonial jurisdiction, is in terms similar to clause 35 of the Bengal High Court Letters-Patent of 1865.²

Powers of single Judges and Division Courts.

“Clause 27. And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North-Western Provinces, in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose, in pursuance of section 108 of the Government of India Act, 1915;³ and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges shall be equally divided, then the opinion of the senior Judge shall prevail.”

As to the latter part of this clause, see *ante*, p. 66.

Regulation of Civil proceedings.

“Clause 28. And We do further ordain that it shall be lawful for the said High Court of Judicature for the North-Western Provinces, from time to time, to make rules and orders for the purpose of adapting, as far as possible, the provisions of the Code of Civil Procedure,⁴ and the provisions of any law which has been or may be made, amending or altering

¹ See *ante*, pp. 64, 65.

² *Ante*, p. 65. Amending Letters-Patent, 1919.

³ Amending Letters-Patent, 1919, cl. 27, s. 1 (i).

⁴ Now Act V of 1908.

the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate, and matrimonial jurisdictions respectively."

As to rules under the Code of Civil Procedure, see Act V of 1908, ss. 122-181.

"Clause 30. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature for the North-Western Provinces, made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by the Judges of the said High Court, or of any Division Court from which an appeal shall not lie to the said High Court under the provision contained in the 10th clause of these presents: Provided, in either case, that the sum or matters at issue is of the amount or value of not less than 10,000 Rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand, or question to or respecting property amounting to or of the value of not less than 10,000 Rupees; or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council: subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the said territories,¹ except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders, as We may with the advice of Our Privy Council, hereafter make in that behalf."

Appeals to
Privy Council.

As to appeals to His Majesty in Council, see *post*, chapter xxx.

Clause 31, which deals with appeals to His Majesty in Council from interlocutory orders of the High Court, is in terms similar to those of clause 40 of the Bengal High Court Letters-Patent of 1865.²

Appeals from
interlocutory
judgments.

Clause 32 deals with appeals in criminal cases to His Majesty in Council.

Appeals to
Privy Council
in criminal
cases.

¹ Amending Letters-Patent, 1919,
cl. 1 (i).

² *Ante*, pp. 68, 69.

Rules as to
transmission of
evidence and
other docu-
ments.

Clause 33, which provides for the transmission of the record, and of documents in the case of appeals to His Majesty in Council, is in terms similar to those of clause 42 of the Bengal High Court Letters-Patent of 1865.¹

High Court to
comply with
requisitions of
Government as
to records, etc.

Clause 34, which requires the High Court to comply with requisitions by the Government for records, returns, and statements, is in terms similar to those in clause 43 of the Bengal High Court Letters-Patent of 1865.²

Powers of
Indian
Legislature.

Clause 35, which preserves the powers of the Indian Legislature, is in terms similar to those of clause 44 of the Bengal High Court Letters-Patent of 1865,³ as amended by the Amending Letters-Patent, 1919.

¹ *Ante*, p. 69.

² *Ante*, p. 69.

³ *Ante*, pp. 69, 70. Amending Letters-Patent, 1919, cl. 1 (*k*).

CHAPTER V.

LETTERS-PATENT OF THE HIGH COURT AT PATNA.

IN 1912 the Province of Bihar and Orissa was constituted.

Constitution of
Province.

It consists of—

the districts of Bhagulpore, Monghyr, Purnea, and the Santhal Parganas in the Bhagulpur Division, the Patna division, comprising the districts of Gaya, Patna, and Shahabad,

the Tirhut Division, comprising the districts of Mazaffarpur and Saran,

the Chota Nagpur Division, comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi, and Singhbhum, and

the Orissa Division, comprising the districts of Angul, Balasore, Cuttack, Puri, and Sambalpur.¹

Letters-Patent establishing a High Court in such new Province were issued in February, 1916. The following are the provisions of such Letters-Patent:—

Clause 1 established a High Court for such Province to be called the High Court of Judicature at Patna and constituted it a Court of Record. ^{Establishment of the Court.}

Clause 2 provides that, until further or other provision be made, the Court shall consist of a Chief Justice and five Judges, and names the first Chief Justice and Judges of the Court. ^{Constitution of the Court.}

Clause 3 provides for declarations to be made by the Judges. ^{Declaration by Judges,}

Clause 4 provides for a seal. It is in terms similar to clause 6 of the Bengal High Court Letters-Patent of 1865² and to clause 4 of the Letters-Patent of the High Court at Allahabad.³ ^{Seal.}

¹ Proclamation of Governor-General dated March 22nd, 1912.

² *Ante*, p. 85.

³ *Ante*, p. 71.

**Writs to issue
in name of the
Crown and
under seal.**

Clause 5 provides that writs, precepts, rules, orders, and other mandatory process shall run in the name of the Crown. It is in terms similar to clause 7 of the Bengal High Court Letters-Patent of 1865.¹

**Appointment
of Officers.**

Clause 6, as amended by Amending Letters-Patent, 1919, cl. 1 (b), provides for the appointment of officers. It is in terms similar to clause 8 of the Bengal Letters-Patent of 1865,² as amended by Amending Letters-Patent, 1919, cl. 1 (a), except that the power to prescribe rules and restrictions and to allow or disallow appointments is given to the Governor in Council, and that the salaries are to be approved of by the Governor in Council, subject to the control of the Governor-General in Council.

**Admission of
Advocates,
Vakils, and
Attorneys.**

Clause 7 gives power to admit advocates, vakils, and attorneys in terms similar to those of clause 9 of the Bengal Letters-Patent of 1865.³

**Rules for quali-
fications, etc.
of Advocates,
Vakils, and,
Attorneys.**

Clause 8 gives power to make rules for the qualification and admission of advocates, vakils, and attorneys in terms similar to clause 10 of the Bengal Letters-Patent of 1865,⁴ and also gives power to remove or suspend them from practice.

**Extraordinary
original civil
jurisdiction.**

Clause 9 gives to the Court extraordinary original civil jurisdiction in terms similar to those in clause 9 of the Letters-Patent of the High Court at Allahabad.⁵

**Appeal to the
High Court
from Judges
of the Court.**

“Clause 10.⁶ And We do further ordain that an appeal shall lie to the High Court of Judicature at Patna from the judgment (not being an order made in the exercise of revisional jurisdiction, and not being the power of superintendence under the provisions of section 107 of the Government of India Act, 1915, or of the exercise of criminal jurisdiction)⁷ of one Judge of the said High Court, or of one Judge of any Division Court constituted in pursuance of section 108 of the Government of India Act, 1915,⁸ and that an appeal shall also lie to the said High Court from the judgment (not being an order or sentence as aforesaid) of two or more Judges of the said High Court, or of any such Division Court, whenever such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the

¹ *Ante*, p. 85.

² *Ante*, pp. 85, 86.

³ *Ante*, p. 86.

⁴ *Ante*, pp. 86, 87.

⁵ *Ante*, p. 72.

⁶ As amended by Letters-Patent,

1919, cl. 1 (b).

⁷ See *Babujan Misir v. Sheo Sahay Chaudhury* (1918), 3 Pat. L. J., 509; [1919 Pat.], 218.

⁸ *Ante*, p. 80.

said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of any such Division Court, in such case shall lie to Us, Our heirs or successors, in Our or their Privy Council as hereinafter provided.¹

“Clause 11. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.²

Appeal from other Civil Courts in the Province of Bihar and Orissa.

“Clause 12. And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of Bihar and Orissa as that which was vested in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents.”

Jurisdiction as to infants and lunatics.

As to the powers of the Bengal High Court in these matters, see *ante*, pp. 57, 58.

Clause 13 provides for the law to be administered by the High Court in the exercise of its extraordinary original civil jurisdiction in terms similar to those of clause 13 of the Letters-Patent of the High Court at Allahabad.³

Law to be administered in the exercise of extraordinary original civil jurisdiction.

Clause 14 provides for the law to be administered by the High Court in the exercise of appellate jurisdiction in terms similar to those of clause 21 of the Bengal Letters-Patent of 1865.⁴

By the High Court in the appellate jurisdiction.

Clauses 15, 16, 17, 18, 19, 20, 21, 22, and 23 deal with jurisdiction in criminal matters.

“Clause 24. And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such civil and maritime

Admiralty jurisdiction.

¹ Cf. *ante*, p. 50.

² *Ante*, p. 73.

³ Cf. *ante*, p. 57.

⁴ *Ante*, pp. 61, 62.

jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as was so exercisable by the High Court of Judicature at Fort William in Bengal.”¹

Criminal
jurisdiction.

Clause 25 deals with Admiralty jurisdiction in criminal cases.

Testamentary
and intestate
jurisdiction.

Clause 26 is similar to clause 25 of the Letters-Patent of the High Court at Allahabad.²

Matrimonial
jurisdiction.

Clause 27 is in terms similar to clause 35 of the Bengal High Court Letters-Patent of 1865.³

Single Judges
and Division
Courts.

“Clause 28. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; ⁴ and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges be equally divided, then the opinion of the senior Judge shall prevail.”

The latter part of this clause is not affected by section 98 of the Civil Procedure Code (Act V of 1908).⁵

Regulation of
proceedings.

“Clause 29. And We do further ordain that it shall be lawful for the High Court of Judicature at Patna from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure, being an Act, No. V of 1908, passed by the Governor-General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.”

As to rules under the Code of Civil Procedure, see Act V of 1908, ss. 122-181.

¹ See *ante*, pp. 62, 63.

² *Ante*, pp. 78, 74.

³ *Ante*, p. 65.

⁴ *Ante*, p. 30.

⁵ *Ante*, p. 66.

Clause 31, which provides for appeals to His Majesty in Council, is in terms similar to those of clause 30 of the Letters-Patent of the High Court of the North-Western Provinces.¹ Appeals to His Majesty in Council.

Clause 32, which deals with appeals from interlocutory judgments to His Majesty in Council, is in terms similar to clause 40 of the Bengal High Court Letters-Patent of 1865,² and clause 31 of the Letters-Patent for the North-Western Provinces,³ except that in clause 32 of the Patna Letters-Patent no reference is made to appeals from sentences. This difference is not apparently of substance. Appeal from interlocutory judgments.

Clause 34, which provides for the transmission of copies of evidence and other documents, is in terms similar to those of clause 42 of the Bengal High Court Letters-Patent of 1865,⁴ and clause 33 of the Letters-Patent of the High Court of the North-Western Provinces.⁵ Rule as to transmission of copies of evidence and other documents.

Clauses 35-41 are as follows :—

“ Clause 35. And We do further ordain that, unless the Governor-General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the Division of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Division the jurisdiction and power by these Our Letters-Patent, or by or under the Government of India Act, 1915,⁶ vested in the said High Court: Provided also that such visits shall be made not less than four times in every year, unless the Chief Justice, with the approval of the Governor in Council, otherwise directs: Provided also that the said High Court shall have power from time to time to make rules, with the previous sanction of the Governor in Council, for declaring what cases or classes of cases arising in the Division of Orissa shall be heard at Patna and not in that Division, and that the Chief Justice may, in his discretion, order that any particular case arising in the Division of Orissa shall be heard at Patna or in that Division. Judges to visit Orissa by way of circuit.

“ Clause 36. And We do further ordain that whenever it appears to the Lieutenant-Governor⁷ in Council, subject to the control of the Governor-General in Council, convenient Special commissions and circuits.

¹ *Ante*, p. 75.

² *Ante*, pp. 68, 69.

³ *Ante*, p. 75.

⁴ *Ante*, p. 69.

⁵ *Ante*, p. 76.

⁶ 5, 6 Geo. V. c. 61, *ante*, chap. ii.

⁷ Now “ Governor,” 9, 10 Geo. V. c. 101, s. 3.

that the jurisdiction and power by these Our Letters-Patent, or by or under the Government of India Act, 1915,¹ vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

Proceedings of Judges on special commission or circuit.

"Clause 37. And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th clause of these presents the proceedings in cases before him or them shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

Power to delegate duties.

"Clause 38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi-judicial and non-judicial duties.²

Cessation of jurisdiction of the High Court of Judicature at Fort William over the Province of Bihar and Orissa.

"Clause 39. And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court on that date in reference to any such matter shall be transferred to the latter Court:

"Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(a) in all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question; and

(b) in all proceedings (not being proceedings referred to in paragraph (a) of this clause) pending in that Court, on the date of the publication of these presents, under the 13th,³ 15th,⁴ 22nd,⁵ 23rd,⁶ 24th,⁷ 25th,⁸ 26th,⁹

¹ 5, 6 Geo. V. c. 61, *ante*, chap. ii.

² Cf. *Laliteswar Singh v. Rameswar Singh* (1907), 34 Cal., 619; 11 G. W. N., 649.

³ *Ante*, pp. 48, 49.

⁴ *Ante*, p. 50.

⁵ Criminal Jurisdiction.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

27th,¹ 28th,² 29th,³ 32nd,⁴ 33rd,⁵ 34th,⁶ or 35th⁷ clause of the Letters-Patent bearing date at Westminster the twenty-eighth day of December, in the year of our Lord One Thousand eight hundred and sixty-five, relating to that Court; and

(c) in all proceedings instituted in that Court, on or after the date of publication of these presents, with reference to any decree or order passed or made by that Court:⁸

“Provided, secondly, that, if any question arises as to whether any case is covered by the first proviso to this clause, the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final.⁹

“Clause 40. And it is Our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant-Governor¹⁰ in Council for records, returns and statements, in such form and manner as he may deem proper.

High Court to comply with requisition from Government for records, etc.

“Clause 41. And We do further ordain and declare that all the provisions of these Our Letters-Patent are subject to the legislative powers of the Governor-General in Legislative Council,¹¹ and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915, and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby.”¹²

Indian Legislatures preserved.

¹ Criminal Jurisdiction.

² *Ibid.*

³ *Ibid.*

⁴ *Ante*, p. 62.

⁵ Criminal Jurisdiction.

⁶ *Ante*, pp. 63, 64.

⁷ *Ante*, p. 65.

⁸ *Ramgobind Chowdhuri v. Thakur Dayal Jha* (1917), 2 Pat. L. J., 653.

⁹ *Lalji Sahu v. Baijnath Goenka*

2 Pat. L. J., 684; [1918 Pat.], 49.

¹⁰ Now “Governor”: 9, 10 Gov. V. c. 101, s. 3.

¹¹ See *ante*, pp. 69, 70.

¹² *Parmeshwar Ahir v. Emperor* (1918), 3 Pat. L. J., 537; [1918 Pat.], 97; *Sheonandan Prasad Singh v. King-Emperor* (1918), 3 Pat. L. J., 581; [1919 Pat.], 1.

CHAPTER VI.

LETTERS-PATENT OF THE HIGH COURT AT LAHORE.

At the time of the issuing of Letters-Patent for the establishment of a High Court at Lahore the Provinces of the Punjab and Delhi¹ were subject to the jurisdiction of the Chief Court of the Punjab which was established by an Act of the Governor-General in Legislative Council, being Act XXIII of 1865, and was continued by later enactments.¹

Province of
Delhi.

On September 17th, 1912, a portion of the Province of the Punjab, viz. the Tahsil of Delhi and the police station of Mahrauli, was created into a separate Province under the name of the Province of Delhi, and on February 22nd, 1915, other territory,² which had theretofore formed a portion of the United Provinces of Agra and Oudh, was added to the new Province.

The constitution and jurisdiction of the Courts of Justice in the new Province remained as they had been before the creation of such Province, except that in enactments which applied to the added territory references to a High Court or to the High Court of Judicature for the North-Western Provinces were to be taken as referring to the Chief Court of the Punjab.³

In March, 1919, Letters-Patent establishing a High Court at Lahore for the Provinces of the Punjab and Delhi were issued.

The effect of the issue of such Letters-Patent has been to supersede the Chief Court of the Punjab. All references in any enactment to the Chief Court must be taken as referring to the High Court at Lahore.⁴

Establishment
of High Court
at Lahore.

Clause 1 of such Letters-Patent established a High Court

¹ Acts IV of 1866, XVII of 1877, XVIII of 1884, Punj. Act III of 1914.

² For the details of such added

territory, see Act VII of 1915, Sch. I.

³ See Act VII of 1915, s. 3.

⁴ Reg. I of 1919, s. 8.

for such Provinces with effect from the date of the publication of such Letters-Patent in the Gazette of India, such High Court to be called the High Court of Judicature at Lahore, and constituted such Court to be a Court of Record.

Clause 2 provides that until further or other provision shall be made the Court shall consist of a Chief Justice and six other Judges, and names the first Chief Justice and Judges of the Court.

Constitution of Court.

Clause 3 provides for declarations to be made by the Judges.

Declarations by Judges.

Clause 4 provides for a seal. It is in terms similar to clause 6 of the Bengal High Court Letters-Patent of 1865.¹

Seal.

Clause 5 is in terms similar to clause 7 of the Bengal High Court Letters-Patent of 1865.²

Writes, etc. to issue in name of the Crown and under seal.

Clause 6 is in terms similar to those of clause 8 of the Bengal Letters-Patent,³ power being given to the Lieutenant-Governor⁴ of the Punjab to make rules and restrictions. The Chief Justice with the approval of the Lieutenant-Governor, and subject to the control of the Governor-General in Council, can fix salaries.

Appointment of officers.

Clause 7 is in terms similar to clause 9 of the Bengal Letters-Patent.⁵

Admission of Advocates, Vakils, and Attorneys.

Clause 8 gives power to make rules for the qualification and admission of advocates, vakils, and attorneys in terms similar to those of clause 10 of the Bengal Letters-Patent of 1865,⁶ and also gives power to remove them or suspend them from practice.

Powers of High Court in making rules for the qualifications, etc. of Advocates, Vakils, and Attorneys.

Clause 9 is in terms similar to clause 9 of the Letters-Patent of the High Court at Allahabad.⁷

Extraordinary original civil jurisdiction.

Clause 10 is as follows: "And We do further ordain that an appeal shall lie to the High Court of Judicature at Lahore from the judgment (not being an order made in the exercise of revisional jurisdiction⁸ and not being a sentence or order passed or made in the exercise of the powers of superintendence under the provisions of section 107⁹ of the Government of India Act, 1915, or in the exercise of criminal jurisdiction) of one Judge of the said High Court, or of one Judge of any

Appeal to the High Court from Judges of the Court.

¹ *Ante*, p. 85.

⁶ *Ante*, pp. 86, 87.

² *Ante*, p. 85.

⁷ *Ante*, p. 72.

³ *Ante*, pp. 85, 86.

⁸ *Post*, chap. xxix. Cf. *ante*,

⁴ Now "Governor" 9, 10 Geo. V. pp. 27-29.

c. 101, s. 8.

⁹ *Ante*, p. 27.

⁵ *Ante*, p. 86.

Division Court constituted in pursuance of section 108¹ of the Government of India Act, 1915, and that an appeal shall also lie to the said High Court from the judgment (not being an order or sentence as aforesaid) of two or more Judges of the said High Court, or of any such Division Court, whenever such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of any such Division Court, in such case shall be to Us, Our heirs or successors, in Our or their Privy Council as hereinafter provided.”²

As to the limitation for such appeals, see *Dyal Singh v. Budha Singh* (1921), 2 Lahore, 127.

Appeal from other Civil Courts in the Provinces of the Punjab and Delhi.

Clause 11 is as follows: “And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.”³

Jurisdiction as to infants and lunatics.

Clause 12 is as follows: “And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents.”

The powers of the High Court with regard to infants are to be found in Act VIII of 1890.⁴ Its powers with regard to lunatics are to be found in Act IV of 1912.⁵

Law to be administered—extraordinary original civil jurisdiction.

Clause 13 is in terms similar to those of clause 13 of the Letters-Patent of the High Court at Allahabad.⁶

¹ *Ante*, p. 30.

² *Of. ante*, pp. 50-57.

³ See *post*, pp. 247, 248.

⁴ *Post*, chap. xxxii.

⁵ *Post*, chap. xl.

⁶ *Ante*, p. 73.

Clause 14 is in terms similar to those of clause 21 of the Bengal Letters-Patent of 1865.¹ Appellate jurisdiction.

Clause 24 is as follows: "And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority as that which was immediately before these presents lawfully exercised within the Provinces of the Punjab and Delhi by the Chief Court of the Punjab,² in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate: Provided always that nothing in these Letters-Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probate and letters of administration."

As to the power possessed by the Chief Court in these matters, see *post*, chap. xxxi.

Clause 25 is in terms similar to clause 35 of the Bengal High Court Letters-Patent of 1865.³ Matrimonial jurisdiction.

Clause 26 is in similar terms to clause 28 of the Letters-Patent of the High Court at Patna.⁴ Single Judges and Division Courts.

Clause 27 is similar in terms to clause 29 of the Letters-Patent of the High Court at Patna.⁵ Regulation of proceedings.

Clause 28 refers to criminal procedure.

Clause 29 is similar in terms to clause 30 of the Letters-Patent of the High Court at Allahabad.⁶ Appeals in civil cases to His Majesty in Council.

Clause 30 corresponds to clause 32 of the Letters-Patent of the High Court at Patna.⁷ Appeals from interlocutory judgments.

Clause 32 corresponds with clause 42 of the Bengal High Court Letters-Patent of 1865.⁸ Rules as to transmission of copies of evidence and other documents.

Clause 33 is as follows: "And We do further ordain that whenever it appears to the Lieutenant-Governor⁹ of the Punjab, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Special commissions and circuits.

¹ *Ante*, pp. 61, 62.

² The Chief Court was empowered by the Local Government to receive applications for probate and letters of administration under the Probate and Administration Act, 1881, Act V. of 1881, s. 2.

³ *Ante*, p. 65.

⁴ *Ante*, p. 80.

⁵ *Ante*, p. 80.

⁶ *Ante*, p. 75.

⁷ *Ante*, p. 81.

⁸ *Ante*, pp. 68, 69.

⁹ Now "Governor" 9, 10 Geo. V. c. 101, s. 3.

Our Letters-Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Lahore should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly."

Proceedings of
Judges on
special com-
mission or
circuit.

Clause 34 is as follows: "And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Lahore visit any place under the 33rd clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India."

Power to
delegate duties.

Clause 35 corresponds with clause 38 of the Letters-Patent of the Patna High Court.¹

Requisitions
from Govern-
ment for
records, etc.

Clause 36 is as follows: "And it is Our further will and pleasure that the High Court of Judicature at Lahore shall comply with such requisitions as may be made by the Governor-General in Council or by the Lieutenant-Governor² of the Punjab for records, returns, and statements, in such form or manner as he may deem proper."

Powers of
Indian Legisla-
tures pre-
served.

Clause 37 corresponds with clause 41 of the Letters-Patent of the Patna High Court.³

¹ See *ante*, p. 82.

c. 101, s. 3.

² Now "Governor": 9, 10 Geo. V.

³ *Ante*, p. 83.

CHAPTER VII.

LETTERS-PATENT OF THE HIGH COURT AT RANGOON.¹

ON November 11th, 1922, Letters-Patent were issued establishing a High Court for the Province of Burma.

At that date the supreme Court of Judicature in Burma was, for Lower Burma, the Chief Court, which had been established by the Lower Burma Courts Act, 1900,¹ and in civil matters for Upper Burma, the Court of the Judicial Commissioner of Upper Burma, which was constituted by the Upper Burma Civil Courts Regulation, 1896.²

Clause 1 of such Letters-Patent established a High Court at Rangoon "for those portions of the Province of Burma at present within the limits of the jurisdiction of the said Chief Court of Lower Burma and of the said Judicial Commissioner and of the said Court of the Judicial Commissioner of Upper Burma." Establishment of Court.

Clause 2 provides that, until further and other provision be made, the High Court shall ordinarily consist of a Chief Justice and not less than seven other Judges, and names the first Chief Justice and Judges of the Court. Constitution of the Court.

Clause 3 provides for a declaration to be made by the Judges. Declaration by Judges.

Clause 4 provides for a seal. Seal.

Clause 5 provides that writs, etc., do run in the name of the Crown. Writs.

Clause 6 provides for the appointment of officers. Appointment of officers.

Clause 7 provides for the admission of advocates, pleaders, and attorneys. Advocates, etc.

Clause 8 is in terms similar to clause 8 of the Patna Letters-Patent.³ Rules, removal and suspension.

"Clause 9. And We do hereby ordain that the High Court of Judicature at Rangoon shall have and exercise ordinary Local limits of ordinary original civil jurisdiction.

¹ Act VI of 1900.

² Reg. I of 1896.

³ *Ante*, p. 78.

original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by the local legislature and until some local limits shall be so declared and prescribed, within the ordinary original civil jurisdiction of the Chief Court of Lower Burma immediately before the publication of these presents,¹ and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

Original jurisdiction as to suits.

“Clause 10. And We do further ordain that the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try and determine suits of every description, if in the case of suits for land² or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part,³ within the local limits of the ordinary original civil jurisdiction of the said High Court, or, if the defendant at the time of the commencement of the suit dwell, or carry on business, or personally work for gain within such limits;⁴ except that the said High Court shall not have original jurisdiction in cases within the jurisdiction of the Rangoon Small Cause Court.”⁵

Extraordinary original civil jurisdiction.

Clause 11 is in terms similar to those of clause 9 of the Letters-Patent of the High Court at Allahabad.⁶

Joinder of several causes of action.

Clause 12 is in terms similar to clause 14 of the Letters-Patent of the Bengal High Court.⁷

Appeal to the High Court from Judges of the Court.

“Clause 13. And We do further ordain that an appeal shall lie to the High Court of Judicature at Rangoon, from a judgment⁸ (not being a judgment made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act⁹ or in the exercise of criminal

¹ I.e. the town of Rangoon, Act VI of 1900, ss. 2 (d), 8 (1): Burma Gazette, 1903, Pt. I, p. 165.

² Cf. *ante*, pp. 40-43.

³ Cf. *ante*, p. 47.

⁴ Cf. *ante*, p. 45.

⁵ *Post*, p. 291.

⁶ *Ante*, p. 72.

⁷ *Ante*, pp. 49, 50.

⁸ *Ante*, pp. 51-55.

⁹ *Ante*, p. 27.

jurisdiction) of one Judge of any Division Court, pursuant to section 108 of the Government of India Act,¹ made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal: and that an appeal shall also lie to the said High Court from the judgment (not being a sentence or order as aforesaid) of two or more Judges of the said High Court or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.²

“ Clause 14. And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Civil Courts of the Province of Burma for which, immediately before the publication of these presents, the Chief Court of Lower Burma or the Court of the Judicial Commissioner of Upper Burma was a Court of Appeal, and from all other Civil Courts, whether within or without the Province of Burma, for which the said High Court is declared to be a Court of Appeal by any law made by the local legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of Lower Burma or to the Court of the Judicial Commissioner of Upper Burma by virtue of any law then in force, or as may after that date be declared subject to appeal to the said High Court by any law made by the local legislature or by competent legislative authority for India. Appeal from other Civil Courts.

“ Clause 15. And We do further ordain that the High Court of Judicature at Rangoon shall have the like power and authority with respect to the persons and estates of infants,³ idiots and lunatics⁴ within the Province of Burma, as that which was vested in the Chief Court of Lower Burma, and the Court of the Judicial Commissioner of Upper Burma immediately before the publication of these presents.⁵ Jurisdiction as to infants and lunatics.

¹ *Ante*, p. 80.

² *Post*, chap. xxx.

³ Act VIII of 1890, *post*, chap. xxxii.

⁴ Act IV of 1912, *post*, chap. xli.

⁵ See Act XIII of 1898, Sch. I.

Insolvent
Court.

“Clause 16. And We do further ordain that the Court for the relief of insolvent debtors at Rangoon shall be held before one of the Judges of the High Court of Judicature at Rangoon and the said High Court, and any such Judge thereof shall have and exercise within the Province of Burma, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in the Province of Burma.¹

Law adminis-
tered in exer-
cise of ordinary
original civil
jurisdiction.

“Clause 17. And We do further ordain that with respect to the law to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction, such law shall be the law which would have been applied by the Chief Court of Lower Burma in such case if these Letters-Patent had not issued.²

Equity ad-
ministered.

“Clause 18. And We do further ordain that, with respect to the equity to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction, such equity shall be the equity as nearly as may be which the High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original civil jurisdiction is authorised to apply to such case.”³

Law and
Equity in
exercise of
extraordinary
original civil
jurisdiction.

Clause 19 of the Letters-Patent is in terms similar to clause 20 of the Letters-Patent of the Bengal High Court.⁴

Clause 20 of the Letters-Patent is in terms similar to clause 21 of the Letters-Patent of the Bengal High Court.⁵

Law and
Equity in
exercise of
appellate
jurisdiction.
Admiralty
jurisdiction
(civil).

“Clause 30. And We do further ordain that the High Court of Judicature at Rangoon shall have and exercise all such civil and maritime jurisdiction as might be exercised by the High Court of Judicature at Fort William in Bengal⁶ as a Court of Admiralty immediately before the date of the publication of these presents, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India as might be exercised by the said High Court at the said date.”⁷

Testamentary
and intestate
jurisdiction.

“Clause 32. And We do further ordain that the High

¹ See Acts III of 1909 and V of 1920, *post*, chap. xxxvii.

² See Act XIII of 1898, s. 13.

³ *Ante*, pp. 59-61.

⁴ *Ante*, p. 61.

⁵ *Ante*, pp. 61, 62.

⁶ *Ante*, pp. 62, 63; *post*, chap. xxxiii.

⁷ *Post*, chap. xxxiii.

Court of Judicature at Rangoon shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Province of Burma by the Chief Court of Lower Burma and the Court of the Judicial Commissioner of Upper Burma in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate: Provided always that nothing in these Letters-Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.¹

"Clause 33. And We do further ordain that the High Court of Judicature at Rangoon shall have jurisdiction, within the Province of Burma, in matters matrimonial between Our Subjects professing the Christian religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Letters-Patent within the said Province, which is lawfully possessed of that jurisdiction."²

Matrimonial
jurisdiction.

Clause 34 is in terms similar to those of clause 28 of the Letters-Patent of the High Court at Patna.³

Single Judges
and Division
Courts.

"Clause 35. And We do further ordain that it shall be lawful for the High Court of Judicature at Rangoon from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, testamentary, intestate and matrimonial jurisdiction, respectively: Provided always, that the said High Court shall be guided, in making such rules and orders, as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General of India in Legislative Council, and being Act No. V of 1908, and the provisions of any law which has been or may be made amending or altering the same by the local legislature or by competent legislative authority for India."

Regulation of
proceedings.

Clause 37 is in terms similar to clause 31 of the Letters-Patent of the High Court at Patna.⁴

Appeals to His
Majesty in
Council.

¹ See *post*, chap. xxxi.

³ *Ante*, p. 80.

² See *post*, chap. xli.

⁴ *Ante*, p. 81.

Appeal from
interlocutory
judgments.

Transmission
of copies of
evidence and
other
documents.

Sitting at
Mandalay.

Clause 38 is in terms similar to clause 32 of the Letters-Patent of the High Court at Patna.¹

Clause 40 is in terms similar to clause 34 of the Letters-Patent of the High Court at Patna.²

“Clause 41. And We do further ordain that, unless the Governor of Burma in Council otherwise directs, one or more Judges of the High Court of Judicature at Rangoon, as the Chief Justice may from time to time direct, shall sit at Mandalay, in order to exercise in respect of cases arising in such areas in Upper Burma as the Governor of Burma in Council may direct the jurisdiction and power by these Our Letters-Patent, or by or under the Government of India Act,³ vested in the said High Court, provided that the Chief Justice may, in his discretion, order that any particular case arising in the said areas in Upper Burma shall be tried in Rangoon.”

Special Com-
mission and
circuits.

Except that the action of the Governor of Burma in Council is not subject to the control of the Governor-General in Council, clause 42 is in terms similar to clause 36⁴ of the Letters-Patent of the High Court at Patna.

Proceedings of
Judges in
special com-
missions and
circuits.

Clause 43 is similar in terms to clause 37⁵ of the Letters-Patent of the High Court at Patna.

Pending pro-
ceedings.

Clause 44 provides for proceedings pending immediately before the publication of these Letters-Patent.

Power to
delegate duties.

Clause 45 is in terms similar to clause 38⁶ of the Letters-Patent of the High Court at Patna.

Calls for
records.

“Clause 46. And it is Our further will and pleasure that the High Court of Judicature at Rangoon shall comply with such requisitions as may be made by the Governor-General of India in Council or by the Governor of Burma in Council for records, returns and statements, in such form and manner as he may deem proper.

Powers of
Indian Legisla-
ture preserved.

“Clause 47. And We do further ordain and declare that all the provisions of these Our Letters-Patent are subject to the legislative powers of the local legislature, and of the Indian legislature, and also of the Governor-General in Council under section 71 of the Government of India Act; and also of the Governor-General under section 72 of that Act; and may be in all respects amended and altered thereby.”

¹ *Ante*, p. 81.

² *Ante*, p. 81.

³ *Ante*, chap. ii.

⁴ *Ante*, pp. 81, 82.

⁵ *Ante*, p. 82.

⁶ *Ante*, p. 82.

PART III.

SUBORDINATE CIVIL COURTS.

CHAPTER VIII.

ADEN AND ITS DEPENDENCIES.

THE Civil Courts established in Aden and its dependencies are subject to the superintendence of the High Court of Bombay,¹ which can exercise powers of revision in the case of references of fact and of law by the Resident, and which can transfer a case to itself.²

The administration of justice in Aden³ is provided for by the Aden Civil and Criminal Justice Act, 1864 (Act II of 1864), the material provisions of which are as follows:—

“Section 2. The administration of civil justice is vested Civil Justice. in the Court of the Resident.”⁴

“Section 3. The Resident may hear and determine, in the first instance, all cases instituted in the Court of the Resident of whatever nature and whatever may be the amount or value of the property in dispute.”⁵

“Section 4. The Assistant Residents⁶ shall have power

¹ *Rhimibhai v. Mariam* (1909), 34 Bom., 267; 12 Bom. L. R., 149.

² *Municipal Officer, Aden v. Ismail (Hajee)* (1905), 33 I. A., 38; 30 Bom., 246; 10 C. W. N., 185; 8 Bom. L. R., 4, ante, p. 49.

³ “Aden” in this Act includes the settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council: Reg. II of 1891, s. 2.

⁴ The word “Resident” denotes

the Chief Civil Officer at Aden, appointed by the Government, by whatever designation that officer may be called, and includes any Acting Resident or officer acting temporarily as such Chief Civil Officer. “Court of the Resident” includes the Court of any Assistant Resident: Act II of 1864, s. 1.

⁵ *Abdullahbai v. Executive Committee, Aden* (1916), 40 Bom., 446; 18 Bom. L. R., 296.

⁶ The words “Assistant Resident” denote any officer appointed by the Government to assist the Resident at Aden by whatever designation

to hear and determine, in the first instance, all cases instituted in the Court of the Resident of whatever nature and whatever may be the amount or value of the property in dispute. The Resident may from time to time direct in what manner the cases instituted in his Court shall be distributed amongst the Assistant Residents.

Appeal from
Assistant
Resident.

"Section 5. When any suit which relates to immovable property, or in which the claim, estimated according to any Law for the valuation of claims for the time being in force,¹ shall exceed five hundred rupees in value, is tried in the first instance by an Assistant Resident, an appeal shall lie from his decision to the Resident. An appeal shall also lie to the Resident from all orders passed by an Assistant Resident in the execution of a decree or other order from which, had the order been passed by a Court subordinate to the Court of a District Judge in the Presidency of Bombay, an appeal would have been allowed to the District Judge,² as well as from all orders passed by an Assistant Resident in cases other than suits as defined in the Code of Civil Procedure."³

Section 6 deals with the powers of the Resident in hearing appeals.

No appeal in
other cases.

"Section 7. No appeal shall lie from the decision of an Assistant Resident in any suit not relating to immovable property in which the claim estimated as aforesaid shall not exceed five hundred Rupees in value; but the Resident may, within the period allowed for appeal in appealable cases, call for any proceedings of the Assistant Resident at any stage thereof, and may pass such orders thereon as he may think fit.

No appeal from
Resident.

"Section 8. No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of Appeal or of Revision; but if in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand Rupees in value, any question of law or of usage having the force of law or of the construction of a document affecting the merits of the decision

Reference to
High Court.

such officer may be called, and includes an Acting Assistant (s. 1).

¹ The law for the valuation of suits is to be found in Act VII of 1887, see *ante*, pp. 11-16.

² *Post*, p. 141.

³ S. 5. "Suit" is not defined in the Civil Procedure Code, but the expression apparently means suits of a civil nature. See Act VIII of 1859, s. 1; Act V of 1908, s. 9.

shall arise, on which the Resident shall entertain doubts, the Resident may, either of his own motion, or on the application of any of the parties to the suit,¹ draw up a statement of the case and submit it, with his own opinion, for the decision of the High Court of Judicature at Bombay: and if in the trial of any suit or the hearing of an appeal in any suit in which the claim, estimated as aforesaid, shall exceed one thousand Rupees in value, any question of fact or of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, the Resident shall, on the application of any of the parties to the suit,¹ or he may of his own motion, draw up a statement of the case and submit it with his own opinion for the decision of the said High Court.

“Section 9. The Resident may proceed in the case, notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the High Court, until the receipt of the order of that Court.

Decree contingent upon opinion of High Court.

“Section 10. Cases referred for the opinion of the High Court shall be heard by two or more Judges of that Court. Before giving judgment the High Court may call for and peruse the whole or any part of the proceedings of the Court of the Resident, but shall not be bound so to do.”

Hearing of reference.

As to the Small Cause Court powers of the Resident and of an Assistant Resident, see Act II of 1864, s. 14.

Small Cause Court powers.

Aden is a scheduled district.² As to the law to be administered in Aden, see section 15, Act XV of 1874, and Regulation II of 1891.

As to the Admiralty and Vice-Admiralty jurisdiction of the Court of the Resident at Aden, see *post*, chapter xxxiii.

The Court of the Resident at Aden has all jurisdiction which is conferred by any Act in His Majesty's possessions abroad, in regard to British vessels seized by the Commander or Officer of any of His Majesty's ships on suspicion of being engaged in, or fitted out for, the slave trade, and in regard to the persons, slaves, goods, and effects on board thereof, in the following cases:—

Slave-trade jurisdiction.

¹ Before judgment is delivered: Bom. L. R., 890.

Bhagavandas Dharamsi v. Besse Frenchman (1909), 38 Bom., 708; 11 Acts XIV of 1874, Sch. I, Pt. II; XV of 1874, Sch. VI, Pt. II.

- (1) where the vessel seized is a British vessel ;
- (2) where the vessel seized has been seized in pursuance of any existing East African slave-trade treaty ;¹ and
- (3) where the vessel seized is not shown to the Court to be entitled to claim the protection of the flag of any foreign state.

The Court has the same jurisdiction in regard to any person seized either at sea or on land, on the ground that he has or is suspected to have been detained as a slave, for the purpose of the slave trade, as it would have if he had been so detained on board a vessel that was seized and brought in for adjudication.²

Jurisdiction
over British
vessels.

The Aden Court has the same jurisdiction in regard to a British vessel which is seized and brought for trial by the Commander or Officer of any ship belonging to a foreign state with whom an East African slave treaty has been made, as such Court would have if the vessel had been seized by the Commander or Officer of any of His Majesty's ships.³

¹ This extends to future treaties, 86, 37 Vict. c. 59, s. 7, and to treaties with the Government of Egypt, 42, 43 Vict. c. 38, s. 3.

² 36, 37 Vict. c. 59, s. 3, as amended by 42, 43 Vict. c. 38, s. 2.

³ 42, 43 Vict. c. 38, s. 4.

CHAPTER IX.

AJMERE AND MAIRWARA.

THE administration of Civil Justice in Ajmere and Mairwara is dealt with by the Ajmere Courts Regulation, 1877¹ (as amended by the Ajmere Amending Regulation, 1893,² the Ajmere Courts Amendment Regulation, 1910,³ and the Ajmere Repealing and Amending Regulation, 1914⁴), which contains the following:—

“Section 4. For the purposes of the administration of civil justice the said territories shall form a single district, and

Ajmere and Mairwara a single district.

There shall be five grades of Civil Courts in such district (namely):—

Grades of Courts in such district.

- (1) the Court of the Chief Commissioner,
- (2) the Court of the Commissioner, and the Court of the Additional District Judge,⁵
- (3) the Courts of Subordinate Judges of the first class,
- (4) the Courts of Subordinate Judges of the second class,
- (5) the Courts of Munsifs.

“Section 4A.⁶ The Governor-General in Council may appoint any person to exercise and discharge such of the powers and duties of the Chief Commissioner under this Chapter⁷ as he may direct, and the Court of such person shall, as regards the exercise and discharge by him of those powers and duties, be deemed to be the Court of the Chief Commissioner.

Power to appoint person to act as Chief Commissioner.

“Section 4B.⁸ The Chief Commissioner, with the previous sanction of the Governor-General in Council, may, from time to time, appoint an Additional Commissioner who shall have all the powers of the Commissioner under this Regulation.

Appointment of Additional Commissioner.

¹ Reg. I of 1877.

² Reg. IX of 1893.

³ Reg. I of 1910.

⁴ Reg. II of 1914.

⁵ *Ibid.*, Sch. Pt. I.

⁶ Inserted by Reg. I of 1921, s. 2.

⁷ Secs. 4-37.

⁸ Inserted by Reg. VII of 1907, s. 2.

Appointment
of Additional
District Judge.

"Section 4c.¹ The Chief Commissioner may appoint any person to be an Additional District Judge, who shall exercise and discharge such of the powers and duties of the Court of the Commissioner as the Chief Commissioner may direct and shall, as regards the exercise and discharge of these powers and duties, be deemed, for the purposes of this Regulation, to be the Court of the Commissioner.

Appointment
of Subordinate
Judges and
Munsifs.

"Section 5.² The Chief Commissioner may appoint as many persons as he thinks fit either by name or office to be in such district Subordinate Judges of the first or of the second class or munsifs.

Court of
Commissioner.

"Section 6. The Court of the Commissioner shall be deemed for the purposes of all enactments for the time being in force to be the District Court or principal Civil Court of original jurisdiction for such district.

"In original suits cognizable under the Code of Civil Procedure³ the jurisdiction of the Commissioner shall, as regards the amount or value of the subject-matter, be without limit.

Court of Sub-
ordinate Judge
of first class.

"Section 7. The jurisdiction of a Subordinate Judge of the first class shall extend to all such suits in which the amount or value of the subject-matter does not exceed ten thousand rupees, or where such Subordinate Judge is invested by the Commissioner with additional powers in this behalf, to all such suits without limit of such amount or value.

Court of Sub-
ordinate Judge
of second class.

"Section 8. The jurisdiction of a Subordinate Judge of the second class shall extend to all such suits in which the amount or value of the subject-matter does not exceed five hundred rupees.

Court of
Munsif.

"Section 9. The jurisdiction of a Munsif shall extend to all such suits when the amount or value of the subject-matter does not exceed one hundred rupees.

Subordinate
Judge of first
class may be
invested with
powers of
District Court.

"Section 10. In addition to the jurisdiction specified in section seven, a Subordinate Judge of the first class may exercise such powers conferred by any enactment for the time being in force on a principal Civil Court of original jurisdiction as may be delegated to him by the Commissioner.

Small Cause
Court powers.

"Section 11.⁴ The Chief Commissioner may invest any Subordinate Judge with the powers of a Judge of a Court of

¹ Inserted by Reg. II of 1914, Sch.
Pt. I.

² Act V of 1908.

³ As amended by Reg. I of 1910,

⁴ As amended by Reg. I of 1910.

Small Causes, and may from time to time determine the local limits within which such powers shall be exercised.

“A Subordinate Judge invested with the powers of a Judge of a Court of Small Causes under this section may, in addition to such powers, exercise any other civil jurisdiction conferred upon him by or under this Regulation, or any other enactment for the time being in force.

“Section 12.¹ The Court of a Subordinate Judge exercising the powers of a Judge of a Court of Small Causes, shall be deemed to be a Court of Small Causes constituted under Act IX of 1887, and except as hereinbefore provided and as provided in section twenty-three of this Regulation, shall be subject to all the provisions of that Act in so far as they may be found applicable. Provincial Small Cause Court Act, 1887, to apply.

“Section 13. The Chief Commissioner may direct that any of the powers hereinbefore conferred on any Court of the two lowest grades shall be exercised by any three persons sitting together as a Bench. Benches of Judges.

“The Chief Commissioner may direct that any powers conferred under this section shall be exercised only in reference to some specified class of cases. Specified classes of cases.

“Where three such persons sit together as a Bench, the decision of the majority of such persons shall be deemed the decision of the Bench.

“A Bench vested with the powers of a Court of any grade under this section, shall be deemed to be a Court of such grade for all the purposes of this Regulation.

“Section 14.² When by any law for the time being in force, an appeal is allowed from any decree or order passed or made by a Civil Court of original jurisdiction, and no provision applicable to the territories to which this Regulation extends is made by such law for determining the Court to which such appeal shall lie, an appeal shall lie as follows, that is to say— Appeals from Courts of original jurisdiction.

“(a) when such decree or order is passed or made by a Munsif or Subordinate Judge of the second class, to a Subordinate Judge of the first class specially empowered by the Chief Commissioner to hear such appeals ;

“(b) when such decree or order is passed or made by a Subordinate Judge of the first class, to the Commissioner ;

¹ As amended by Reg. IX of 1898.

² As amended by Reg. I of 1910.

“(c) when such decree or order is passed or made by the Commissioner to the Chief Commissioner.”

An appeal from a Commissioner's decree made in accordance with the Chief Commissioner's judgment lies in an appropriate case¹ to His Majesty in Council.²

Second appeal.

“Section 15. When the decision of a Subordinate Judge or of the Commissioner passed in appeal, reverses or modifies the decision of the Court of original jurisdiction on a point material to the merits of the case, and is not declared by any law for the time being in force to be final, the Commissioner or Chief Commissioner, as the case may be, may receive a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgments of the subordinate Courts, a further consideration of the case appears to him to be requisite for the ends of justice.

When decision of first Appellate Court to be final.

“Section 16. When the Court of first appeal confirms the decision of the Court of original jurisdiction on a matter of fact, such decision shall be final.

Application to first Appellate Court to refer case.

“Section 17. When the Court of first appeal confirms the decision of the Court of original jurisdiction on a question of law, or usage having the force of law, or the construction of any document, or the admissibility of any evidence affecting the merits of the case, no further appeal shall lie, but the party aggrieved by such decision may apply to such Court of first appeal to draw up a statement of such question and to submit it :

“if such Court of first appeal be that of a Subordinate Judge, to the Commissioner ;

“if such Court be that of the Commissioner or Chief Commissioner, to the High Court of Judicature at Allahabad.”

The High Court cannot consider whether the point reserved arises in such case.³

As to the procedure in such application, see Regulation I of 1877, sections 18–20. It is open to the parties to refer the matter to arbitration in spite of such reference.⁴

Any Appellate Court may

“Section 21. When an Appellate Court in the trial of a

¹ *Post*, chap. xxx.

² *Thakur of Masuda v. Widows of Thakur of Nandwara* (1880), 2 All., 819.

³ *Kalian Mal v. Ramkishan* (1898), 21 All., 163.

⁴ *Ram Lal v. Deo Raj* (1921), 44 All., 91.

civil appeal¹ entertains a doubt in respect of a question of the nature specified in section seventeen, such Court may refer such question in manner provided by section eighteen. make reference of its own motion.

"References under this section, when made by a Subordinate Judge, shall be made to the Commissioner, and when made by the Commissioner or Chief Commissioner to the High Court of Judicature at Allahabad."

"Section 23. The Court of the Chief Commissioner shall be deemed for the purposes of all enactments for the time being in force to be the highest Civil Court of Appeal in the said territories. Court of Chief Commissioner to be deemed highest Court of Appeal.

"Provided² that references under section 113 of the Code of Civil Procedure,³ or under section 11 of the Provincial Small Cause Courts Act, 1887,⁴ shall be made, not to the Chief Commissioner, but to the High Court at Allahabad. Reference.

"Section 23A.⁵ Where the Additional District Judge has been specially or generally empowered to exercise and discharge any of the powers and duties of the Court of the Commissioner, references to the Commissioner in sections 14 to 23 shall, in respect of such powers and duties, be deemed to refer to the Additional District Judge."

For the purposes of the Indian Press Act, 1910 (I of 1910), the High Court at Allahabad is the High Court.⁶

"Section 24. The general control over all the Courts of the three lowest grades shall be vested in the Commissioner, subject to the superintendence of the Chief Commissioner. Control over subordinate Courts.

"The general control over the Court of the Commissioner⁷ and of the Additional District Judge when exercising or discharging the powers and duties of that Court⁷ shall be vested in the Chief Commissioner.

"Section 25.⁸ Subject to the control of the Chief Commissioner, the Commissioner may direct the civil judicial business to be distributed among the Courts of the three lowest grades in such way as he thinks fit: provided that no Court shall exercise any powers beyond those conferred on it Power to distribute judicial business.

¹ *Thakur of Masuda v. Widows of Thakur of Nandwara* (1880), 2 All., 819.

² Reg. IX of 1893.

³ Act V of 1908, *post*, p. 358.

⁴ Act IX of 1887, *post*, p. 270.

⁵ Inserted by Reg. II of 1914.

⁶ Act I of 1910, s. 2 (c).

⁷ Reg. II of 1914.

⁸ As amended by Reg. II of 1914.

by or under this Regulation or some other enactment for the time being in force.

Withdrawal
of suit.

"Section 26. The Chief Commissioner or Commissioner shall have power to withdraw any suit or appeal pending in any Court subject to his control or superintendence, and try such suit or appeal himself, or refer it for trial to any other such Court competent to try the same.

Delegation of
similar power
to Subordinate
Judge.

"The Commissioner may empower any Subordinate Judge of the first class to exercise a like power in respect of suits pending in the Court of any other Subordinate Judge or of any Munsif.

"In either of the following cases :—

Case tried by
Chief Commis-
sioner in
another
capacity.

(a) if there is an appeal before the Chief Commissioner from a decree or order which was passed by him in any other capacity or in which he is personally interested,

(b) if there is an application before him for the revision of such decree or order,

he shall, unless the parties consent to his proceeding with the case himself, transmit the record to the High Court at Allaha-bad and that Court shall dispose of the appeal or application as though it had been preferred or made to itself." ¹

What Court
can try question
as to succession
to taluqdars,
thakurs and
jagirdars.

"Section 34. Notwithstanding anything contained in the foregoing sections of this Regulation, no suit in which any question regarding a right to inherit as heir by birth or adoption, or to succeed by any other title to the estates of any of the Taluqdars, Thakurs or Jagirdars entered in the schedule annexed to the Ajmere Taluqdars' Relief Regulation, 1872,² is in issue, shall be heard by any Court of a lower grade than that of a Subordinate Judge of the first class.

Chief Commis-
sioner not
bound to refer
points to High
Court.

"Section 35. Notwithstanding anything contained in sections seventeen and eighteen of this Regulation, the Chief Commissioner shall not on appeal in such suits be bound to make any such reference to the High Court.

Reference to
Chief
Commissioner.

"Section 36. References made by the Commissioner of Ajmere on appeal in such suits under sections eighteen and twenty-one, shall be made, not to the said Court as provided by those sections, but to the Court of the Chief Commissioner :

"Provided that if, on any reference being made to him

¹ a-a. This paragraph was added
by Reg. IX of 1890, s. 1.

² Reg. IV of 1872.

under this section, the Chief Commissioner is of opinion that such reference is one which should be disposed of by the said High Court, he may return it to the Commissioner with a view to its being submitted to that Court as provided by the said sections eighteen and twenty-one."

As to the privileges of *Istimrardars* ¹ in Civil and Revenue cases, see Regulation II of 1877, sections 28-30.

Under the Ajmere Taluqdars' Relief Regulation, 1872 (IV of 1872), the Commissioner of Ajmer may refer any application, petition, or suit respecting the property under the management of his Court for investigation and decision by any Court subordinate to him. When such Court has passed its decision (subject to the ordinary right of appeal in civil cases) such Court or Appellate Court shall certify its final decision to the Commissioner, who shall proceed to pass such order for its execution as is just and expedient with reference to other claims admitted against the property.²

Power is given to the Commissioner to investigate claims,³ and he may refer the suit for the whole debt, or any portion thereof, to any Court subordinate to him for investigation and decision.⁴

So long as management continues all other Civil Courts are precluded from entertaining any suit or petition with regard to the property.⁵

As to Ahmadabad Taluqdars, see *post*, chap. xlvii.

Ajmere and Mairwara is a scheduled district.⁶

As to the laws applicable, see the Ajmere Laws Regulation, 1877,⁷ with its amendments. Laws applicable.

¹ The holders of a perpetual farm on lease from Government or a Zemindar. See Reg. II of 1877, s. 20; Wilson's Glossary, p. 221.

² Reg. IV of 1872, s. 6.

³ *Ibid.* ss. 7-12.

⁴ *Ibid.* s. 13.

⁵ Reg. IV of 1872, s. 6.

⁶ Acts XIV of 1874, Sch. I, Pt. X; XV of 1874, Sch. VI, Pt. IX.

⁷ Reg. III of 1877, ss. 2-5.

CHAPTER X.

BENGAL, AGRA, BIHAR, ORISSA, AND ASSAM.

Territorial limits.

THE constitution and jurisdiction of the Civil Courts in Bengal (except Calcutta), the Province of Agra, and the Province of Bihar and Orissa and Assam are contained in the Bengal, Agra,¹ and Assam Civil Courts Act, 1887,² which extends to the territories for the time being respectively administered by the Governor of Bengal,³ the Governor of Bihar and Orissa,⁴ the Governor of the United Provinces⁵ (other than Oudh), and the Governor of Assam,⁶ except such portion of these territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts.⁷

The Act contains the following (amongst other) provisions:—

Classes of Courts.

“Section 3. There shall be the following classes of Civil Courts under this Act, namely:—

- (1) the Court of the District Judge;⁸
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.”

As to honorary Munsifs, see *post*, pp. 182-186.

Number of District Judges, Subordinate Judges, and Munsifs.

“Section 4.⁹ The Local Government may alter the number of Subordinate Judges and Munsifs now fixed, and with the previous sanction of the Governor-General in Council, the number of District Judges.”

¹ See Act XVI of 1911, s. 1.

² Act XII of 1887.

³ Act VII of 1912, Sch. A, *ante*, p. 35.

⁴ *Ibid.* Sch. B, *ante*, p. 77. This includes Sambalpur district: Ben. Act IV of 1906, s. 2.

⁵ This includes Dehra Dhun (except Jaunsar Bawar): Act XXI of 1871, s. 3.

⁶ Act IV of 1914, Sch. Act VII of

1912, Sch. C, *ante*, p. 35.

⁷ Act XII of 1887, s. 1 (2).

⁸ As amended by Act IV of 1914, Sch. The District Court of Saharunpur is now the District Court of the district of Dehra Dhun (except Jaunsar Bawar): Act XXI of 1871, s. 3.

⁹ As amended by Act XXXVIII of 1920, Sch. I.

"Section 6.—(1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever an increase of the number of District Judges or Subordinate Judges has been made under the provisions of section 4, the Local Government may fill up the vacancy or appoint the additional District Judges or Subordinate Judges, as the case may be.

"(2) Nothing in this section shall be construed to prevent a Local Government from appointing a District Judge or Subordinate Judge to discharge for such period as he thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge as the case may be.

"Section 7.¹—(1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

"(2) The Local Government may, after consultation with the High Court and subject to the control of the Governor-General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

"Section 8.²—(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court, appoint such Additional Judges as may be requisite.

"(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge."

A Judge cannot transfer a part-heard case.³ He can transfer a particular case,⁴ or a class of cases, and he can assign all the cases from a particular district.⁵

¹ As amended by Act IV of 1914, s. 2, Sch. Section 7 does not apply to Honorary Munsifs and Benches, see s. 18 of U. P. Act II of 1896, post, p. 135.

² As amended by Acts XVI of 1911, s. 3, and IV of 1914, Sch.

³ *Bidya Moyee Debya Chowdhuri*

rani v. Surja Kanta Acharji (1905), 32 Calc., 875; 9 C. W. N., 705.

⁴ *Rupkishore Lal v. Neman Bibi* (1915), 42 Calc., 842; 19 C. W. N., 791. Cf. ante, p. 49.

⁵ *Mutasaddi Lal v. Mule Mal* (1912), 34 All., 205.

The Judge can assign to an Additional Judge proceedings under the Provincial Insolvency Act, 1920 (V of 1920),¹ or under section 158 of the Bengal Tenancy Act, 1885 (VIII of 1885).²

As to a suit under section 92 of the Civil Procedure Code (public charities), see *Mohabor Rahman v. Hasi Abdur Rahim* (1920), 48 Cal., 58.

This section does not permit an Additional Judge to try a case for the trial of which special powers are required, unless such powers are vested in him.³

Administrative
control of
Courts.

"Section 9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

Temporary
charge of
District Court.

"Section 10.—(1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

"(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.⁴

Transfer of
proceedings on
vacation of
office of Sub-
ordinate Judge.

"Section 11.—(1) In the event of the death, resignation or removal⁵ of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them.

"(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred :

¹ *Makhan Lal v. Sri Lal* (1912), 84 All., 382.

² *Lal Behari Basak v. Akhil Chandra Santra* (1922), 27 O. W. N., 815.

³ *Mahomed Musa v. Abul Hassan Khan* (1914), 41 Cal., 866; 18 C. W. N., 612.

⁴ As to Revenue Court appeals, see *Rahmat Ali Khan v. Abdullah* (1901), 23 All., 455.

⁵ This includes the case where the Court is abolished: *Gappu Lal v. Mathura Das* (1902), 25 All., 188.

“(8) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

“(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

“Section 12.¹—(1) A District Judge, on the occurrence within the local limits of his jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 7 or his appointment is cancelled by the District Judge.

Temporary
charge of
office of
Munsif.

“The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

“Section 13.—(1) The Local Government may, by notification in the official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

Power to fix
local limits of
jurisdiction of
Courts.

“(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign² to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.”

The Judge cannot alter the local limits of the jurisdiction of a Subordinate Judge.³

Where there is no such assignment, the Subordinate Judges must be taken to have concurrent jurisdiction.⁴

“(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges or to one of two or more

¹ This section does not apply to Honorary Munsifs and Benches, see the United Provinces Munsifs Act, 1896 (U. P. Act II of 1896), *post*, p. 185.

² As to execution of decrees, see *Md. Kasemali (Munshi) v. Niamuddin*

Ahmed (Munshi) (1921), 26 C. W. N., 216.

³ *Bachu Koer v. Golab Chand* (1899), 27 Calc., 272.

⁴ *Chaturbhuj Marwari v. Walker* (1908), 18 C. W. N., 265.

Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the Local Government under sub-section (1).¹

“(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

“(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

Place of sitting
of Courts.

“Section 14.—(1) The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

“(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.”

As to holidays, see Act XII of 1887, s. 15, as amended by Act XXXVIII of 1920, Sch. I.

Continuance of
proceedings of
Courts ceasing
to have juris-
diction.

“Section 17.—(1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.²

“(2) Nothing in this section applies to cases for which provision is made in section 114 or sections 36 and 37 of the Code of Civil Procedure, 1908, or in any other enactment for the time being in force.

Extent of
original juris-
diction of
District or
Subordinate
Judge.

“Section 18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure, 1908, to all original suits for the time being cognizable by Civil Courts.”

Indigo.

Bengal Regulation VI of 1828, which with certain amendments is still in force in Bengal, authorises the institution of summary suits before the District Judge, within whose local jurisdiction the land stipulated to be cultivated with the indigo-plant may be situated, to enforce

¹ As to execution of the decree after a redistribution of cases, see *Jagernath Suhai v. Dip Rani Koer* (1895), 22 Cal., 871; *Kali Pado*

Mukerjee v. Dino Nath Mukerjee (1897), 25 Cal., 315.

² See *Jafar (Sheikh) v. Kamalini Debi* (1900), 5 O. W. N., 150.

the execution of certain written engagements for the cultivation and delivery of the indigo-plant.

“Section 19.¹—(1) Save as aforesaid, and subject to the ^{Extent of jurisdiction of} provisions of sub-section (2), the jurisdiction of a Munsif ^{Munsif.} extends to all like suits of which the value does not exceed one thousand rupees.”

A Munsif can investigate a claim for mesne profits pending suit in excess of one thousand rupees,² but in the case of mesne profits before suit he has no such power.³

The object of sections 19 and 20 was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs.1,000.⁴

A full Bench of the Allahabad High Court, differing from the Bengal High Court,⁵ has held that a Munsif can try a suit for restitution of ^{Restitution of} conjugal rights.⁶ It is submitted that the former view, which was in ^{conjugal} accordance with the almost universal practice,⁷ is correct.

“(2)⁸ The Local Government may, on the recommendation of the High Court, direct by notification in the official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding two⁹ thousand rupees as may be specified in the notification.

“ Provided that the Local Government may, by notification in the local official Gazette, delegate to the High Court its powers under this section.

“Section 20.—(1) Save as otherwise provided by any ^{Appeals from} enactment for the time being in force, an appeal from a decree ^{District and} or order of a District Judge or Additional Judge¹⁰ shall lie to ^{Additional} the High Court. ^{Judges.}

“(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.”

This section merely defines the Court to which appeals lie. It does

¹ S. 19 does not apply to Honorary Munsifs and Benches: U. P. Act II of 1896, s. 13.

² *Dinanath Sahai v. Mayawati Kuer* (1921), 6 Pat. L. J., 54; [1921 Pat.], 69.

³ *Bhupendra Kumar Chakravarty v. Purna Chandra Bose* (1910), 43 Calc., 650; 15 C. W. N., 506.

⁴ *Nidhi Lal v. Mashar Husain* (1884), 7 All., 230.

⁵ *Aklemannessa Bibi v. Mahomed*

Hatem (1904), 31 Calc., 849; 8 C. W. N., 705.

⁶ *Zair Husain Khan v. Khurshed Jan* (1906), 28 All., 545.

⁷ *Ibid.* at p. 547.

⁸ As amended by Act IV of 1914, s. 2, Sch.

⁹ In Bihar and Orissa, read “four”:

B. & O., Act IV of 1922, s. 2.

¹⁰ *Makhan Lal v. Sri Lal* (1912),

84 All., 382.

not define the right of appeal, or the class of decrees or orders from which appeals lie.¹

Appeals from
Subordinate
Judges and
Munsifs.

"Section 21.—(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees."

As to the power of the appellate Court to make a decree for a sum exceeding five thousand rupees, see *Satya Kinkar Sahana v. Shiba Prasad Singh (Raja Sri Sri)* (1919), 4 Pat. L. J., 447; [1920 Pat.], 17.

As to the valuation of suits, see *ante*, pp. 11-14.

"(b) To the High Court in any other case."

A District Judge in such case cannot entertain an appeal.²

"(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge."

An appeal so lies even when the Munsif has investigated a claim amounting to more than one thousand rupees.³

"(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

"(4) The High Court may, with the previous sanction of the Local Government, direct, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly."

When appeals are so preferred the subordinate Judge can hear and decide them.⁴

Power to
transfer to
Subordinate
Judges appeals
from Munsifs.

"Section 22.—(1) A District Judge may transfer to any Subordinate Judge under his administrative control any

¹ *Protap Chandra Misser v. Bro-jonath Misser* (1891), 19 Cal., 275.

² *Bandiram Mookerjee v. Purna Chandra Roy* (1917), 45 Cal., 926; *Raghu Singh v. Usuf Ali* (1918), 4 Pat. L. J., 202.

³ *Dinanath Sahai v. Mayawati Kuer* (1921), 6 Pat. L. J., 54; [1921 Pat.], 69.

⁴ *Sheo Harakh v. Ram Chandra* (1914), 37 All., 76.

appeals pending before him from the decrees or orders of Munsifs."

This does not include an application for revocation of a sanction for a prosecution.¹

When the appeal is so transferred the Subordinate Judge has all the powers of an appeal Court.²

"(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

"(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge."³

"Section 23.⁴—(1) The High Court may, by general or special order, authorise any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.

"(2) The proceedings referred to in sub-section (1) are the following, namely:—

- (a) proceedings under Bengal Regulation V of 1779⁵ (to limit the interference of the Zillah and City Courts of Dewanny Adawlut in the execution of Wills and Administration to the Estates of persons dying intestate),"

As to proceedings under Act VIII of 1890 (guardians and wards), see section 2 (3) of that Act.

- "(d) proceedings under the Indian Succession Act, 1865,⁶ and the Probate and Administration Act, 1881,⁷ which cannot be disposed of by District Delegates; and

¹ *Hari Mandal v. Keshab Chandra Manna* (1912), 16 C. W. N., 903; *Ram Charan Chandra v. Taripulla Sheikh* (1912), *ibid.* 645.

² *Vismadev Das v. Sita Nath Roy* (1912), 40 Cal., 259.

³ See *Sohna v. Khalak Singh* (1889), 13 All., 78. As to appeals in cases under the Agra Tenancy Act (U. P. Act II of 1901), see *Afsal Shah v. Muhammad Abdul Karim Khan*

(1915), 37 All., 232.

⁴ This section does not apply to Honorary Munsifs and Benches, see U. P. Act II of 1896, s. 13, *post*, p. 135.

⁵ *Post*, pp. 397, 398.

⁶ Act X of 1865.

⁷ Act V of 1881. *Kunjo Behari Gossami v. Hem Chunder Lahiri* (1898), 25 Cal., 340.

(e) references by Collectors under Sch. III. para. 4, of the Code of Civil Procedure (V of 1908).¹

"(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

Disposal of proceedings referred to in last foregoing section.

"Section 24.²—(1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules³ applicable to like proceedings when disposed of by the District Judge:

"Provided that an appeal from an order of a Munsif in any such proceeding shall lie to the District Judge.

"(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

"Section 25.⁴ The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887,⁵ for the trial of suits cognizable by such Courts up to such value, not exceeding five hundred rupees⁶ in the case of a Subordinate Judge or two hundred and fifty in the case of a Munsif, as it thinks fit, and may withdraw any jurisdiction conferred: Provided⁷ that the Local Government may, by notification in the local official Gazette, delegate to the High Courts its powers under this section.

Suspension or removal of Judges by Local Government.

"Section 26. Any District Judge, Additional Judge, Subordinate Judge or Munsif may, for any misconduct, be suspended or removed by the Local Government.

¹ This refers to execution of decrees by Collectors.

² This section does not apply to Honorary Munsifs and Benches; see United Provinces Honorary Munsifs Act, 1896 (U. P. Act II of 1896), s. 13, *post*, p. 135.

³ This includes the rules relating to appeals: *Sohna v. Khalak Singh*

(1889), 13 All., 78.

⁴ This section does not apply to Honorary Munsifs and Benches; see United Provinces Honorary Munsifs Act, 1896 (U. P. Act II of 1896), s. 13, *post*, p. 135.

⁵ IX of 1887.

⁶ Act XVI of 1911, s. 4.

⁷ Act IV of 1914, Sch. Pt. I.

"Section 27.—(1) The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge. Suspension of Subordinate Judge by High Court.

"(2) Whenever the High Court suspends a Subordinate Judge under sub-section (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

"Section 28.—(1) The High Court may appoint a commission for inquiring into alleged misconduct of a Munsif. Suspension or removal of Munsif by High Court.

"(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

"(3) The provisions of the Public Servants' Inquiries Act (XXXVII of 1850) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

"(4) The High Court may, before appointing the commission, suspend the Munsif pending the result of the inquiry.

"(5) The High Court may, without appointing a Commission, remove or suspend a Munsif.

"Section 29.—(1) A District Judge may, whenever he sees urgent necessity for so doing, suspend a Munsif under his administrative control. Suspension of Munsif by District Judge.

"(2) Whenever a District Judge suspends a Munsif under sub-section (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit."

As to the appointment and removal of ministerial officers, see sections 30 to 35 of the Act.

"Section 36.¹—(1) The Local Government may invest with the powers of any Civil Court under this Act, by name or in virtue of office— Power to confer powers of Civil Courts on officers.

(a) any² officer in the Chota Nagpur, Sambalpur,³ Jalpaigori or Darjeeling district, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Sylhet, or,

(b) after consultation with the High Court, any officer

¹ As amended by Act XXXVIII of 1920, Sch. I.

² This includes an officer with judicial powers: *Haladhar Mahato*

v. *Kali Prasanna Ghose* (1897), 2 C. W. N., 127.

³ Ben. Act IV of 1906, s. 5.

serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the Local Government.

“(2) Nothing in sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive) or sections 27 to 35 (both inclusive), applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

“(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

“(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.”

As to the law to be applied by the Courts, see section 37.

Judges not to
try suits in
which they are
interested.

“Section 38.¹—(1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

“(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

“(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

“(4) The superior Court shall thereupon dispose of the case under section 24 of the Code of Civil Procedure, 1908.

“(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

¹ This applies to Provincial Courts s. 40 (1).
of Small Causes: Act XII of 1887,

“Section 39.¹ For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure, 1908, the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

Subordination
of Courts to
District Court.

“Section 40.—(1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.²

Application of
Act to Provin-
cial Courts of
Small Causes.

“(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.”

¹ This applies to Provincial Courts of Small Causes : Act XII of 1887, s. 40 (1).
² Act IX of 1887.

CHAPTER XI.

COURTS IN CERTAIN EXCEPTIONAL DISTRICTS IN BENGAL AND ASSAM.

The Andaman and Nicobar Islands.

THERE are certain special provisions in the Andaman and Nicobar Islands Regulation, 1876 (Reg. III of 1876) for the administration of justice in the group of islands known as the Great and Little Andamans with their dependencies, and the Island of Nancowry, together with all the others commonly known as the Nicobar Islands, that is to say, the islands of Car Nicobar and Great Nicobar, with those lying between them, including Tillanchong (hereafter called the Nicobars),¹ save in so far as expressly provided by that Regulation.

These islands are a Scheduled District.²

Code of Civil
Procedure
applied.

The Code of Civil Procedure (Act V of 1908) is in force subject to the following modifications, namely:—

Second appeal.

For section 100 the following section has been substituted:—
“Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to the High Court, reversing or modifying the decision of the Court of original jurisdiction on a point material to the merits of the case, an appeal shall lie to the High Court, if it appears to that High Court, on a perusal of the grounds of appeal and of copies of the judgment of the Court below, that a further consideration of the case is requisite for the ends of justice.”³

¹ See Reg. III of 1876, as amended by Regs. I of 1884, IV of 1908, and II of 1915, s. 2. Little Cocos and Preparis islands ceased to be subject to this Regulation, as from the 29th of November, 1882: Act VIII of 1883, s. 4.

² Acts XIV of 1874, s. 1, Sch. I, Pt. VIII; XV of 1874, s. 2, Sch. V, Pt. VIII, amended by Act VIII of 1883.

³ Reg. III of 1876, s. 14, as amended by Reg. I of 1884, s. 14, and Reg. IV of 1908, s. 20.

Section 102 of Act V of 1908, prohibiting second appeals in suits cognizable by a Court of Small Causes is to be omitted.¹ Small Cause Court suits.

For section 115 of Act V of 1908 the following is substituted:— Revision.

“The High Court may call for the record of any proceedings of a Court subordinate to it, and, if it appears that there has been in the proceedings an error material to the merits of the case, may pass such judgment or order thereon as it thinks fit.”²

“Section 14A.³ The following provisions shall regulate the administration of Civil justice in the Nicobars, namely:— Civil Justice in the Nicobars.

“(1) Any officer of Government or other person empowered in this behalf by the Chief Commissioner may try and decide any suit or other proceeding of a Civil nature⁴ arising in the Nicobars, and in doing so shall follow such practice and procedure as the Chief Commissioner may, with the previous sanction of the Governor-General in Council, prescribe by notification in the Gazette of India.

“(2) In deciding such suit or other proceeding, such officer or other person shall have regard to local custom and to justice, equity and good conscience.

“(3) The Chief Commissioner may revise any decree or other order made in the exercise of the powers conferred by this section.”

Chittagong Hill-Tracts.

The administration of Chittagong Hill-Tracts, the boundaries of which may be defined or varied by the Government of Bengal with the previous sanction of the Governor-General in Council,⁵ is carried out by the Chittagong Hill-Tracts Regulation, 1900 (I of 1900), and rules made under section 18 thereof.⁶

The Chittagong Hill-Tracts is a Scheduled District.⁷

As to the enactments applicable to the Chittagong Hill-Tracts, see Regulation I of 1900, section 4, Schedule.

¹ Reg. III of 1876, s. 14, as amended by Reg. I of 1884, s. 14, and Reg. IV of 1908, s. 20.

² *Ibid.*

³ Inserted by Reg. II of 1915, s. 4.

⁴ See *post*, pp. 294-302.

⁵ Reg. I of 1900, s. 2 (2).

⁶ *Ibid.* s. 3.

⁷ Acts XIV of 1874, s. 1, Sch. I, Pt. III; XV of 1874, s. 2, Sch. VI, Pt. II.

Appointment
of officers.

The Local Government may appoint a Superintendent, Assistant Superintendents, and other officers for the administration of the tracts, and may invest any Assistant Superintendent with the powers of the Superintendent, and define the limits of his jurisdiction.¹

To be a
district under
Superin-
tendent.

The Chittagong Hill-Tracts constitute a district for the purpose of . . . civil jurisdiction. The Superintendent is the District Magistrate, and subject to orders passed by the Local Government, the general administration of the Tracts, in . . . civil, . . . matters is vested in the Superintendent.²

Power to
withdraw case.

The Superintendent may withdraw any . . . civil case pending before any officer or Court in the Tracts, and may either try it himself or refer it for trial to some other officer or Court.³

Control and
revision.

All officers in the Chittagong Hill-Tracts are subordinate to the Superintendent, who may revise any order made by any such officer, including an Assistant Superintendent invested with any of the powers of a Superintendent.⁴

The Commissioner may revise any order made by the Superintendent or by any officer in the Hill-Tracts.⁵

The Local Government may make rules for amongst other things—

(a) the administration of civil justice in the Hill-Tracts,

(b) the prohibition, restriction, and regulation of the appearance of legal practitioners in cases arising in such tracts.⁶

Bar to jurisdic-
tion of Civil
Courts.

Except as provided in the Regulation or in any other enactment for the time being in force, a decision passed, act done, or order made under the Regulation or the rules thereunder cannot be called in question in any Civil or Criminal Court.⁷

Eastern Bengal and Assam.

Hill-Tracts in
Eastern Bengal
and Assam.

As to the Garo Hills, Khasi and Jaintia Hills, Lushai Hills, Naga Hills, North Cachar, Subdivision of Cachar District, Mukir Hill-Tracts in Nowgong and Sibsagar Districts, and the Dibrugarh Frontier Tract in Lakhimpur District, see the Assam Frontier Tracts Regulations, 1880,⁸ sects. 1, 2 ; and

¹ Reg. I of 1900, s. 6.

² *Ibid.* s. 7.

³ *Ibid.* s. 10.

⁴ *Ibid.* s. 17 (1).

⁵ *Ibid.* s. 17 (2).

⁶ *Ibid.* s. 18.

⁷ *Ibid.* s. 19.

⁸ Reg. II of 1880.

1884,¹ sec. 1, and the Eastern Bengal and Assam General Clauses Act, 1909,² s. 18.

Jalpaiguri and Darjeeling Districts.

These are Scheduled Districts.³

The High Court of Calcutta has and exercises with regard to the District of Darjeeling all such jurisdiction and powers⁴ as it has and exercises with regard to any other territory.⁵

¹ Reg. III of 1884.

² Eastern Bengal and Assam Act I of 1909.

³ Acts XIV of 1874, s. 1, Sch. I, Part III; XV of 1874, s. 2, Sch. VI,

Part III.

⁴ *I.e.* Outside the local limits of its ordinary original Civil Jurisdiction.

⁵ Act XIX of 1867, s. 2.

CHAPTER XII.

COURTS IN CERTAIN EXCEPTIONAL TRACTS IN BIHAR AND ORISSA.

Angul.

Angul District. THE following provisions are to be found in the Angul Laws Regulation, 1913,¹ which applies to the district comprising Angul and the area known as the Khondmals.²

As to the law applicable, see sections 3 to 8 and 30 of that Regulation.

The district is divided, for Civil, Criminal, and Revenue purposes, into the Sadar or Angul sub-division and the Khondmals sub-division.³

The following are the Courts of Civil Justice. They are subject to the general superintendence and control of the Local Government.⁴

Ordinary
Courts of Civil
Justice.

- (1) The Court of the Deputy Collector and Deputy Magistrate;

This includes any Sub-Deputy Collector and Sub-Deputy Magistrate who is specially empowered by the Commissioner to discharge the functions of a Deputy Collector and Deputy Magistrate.⁵

- (2) the Court of the Sub-divisional officers⁶ of Angul and the Khondmals;

- (3) the Court of the Deputy Commissioner;⁷ and

- (4) the Court of the Commissioner.

Establishment
of other Courts.

"Section 11. The Local Government may establish any other Courts and may invest them with such powers as it may prescribe to be exercised in the district.

¹ Reg. III of 1913.

² *Ibid.* s. 2 (d).

³ *Ibid.* s. 9.

⁴ *Ibid.* s. 10.

⁵ *Ibid.* s. 2 (b).

⁶ That is the officers in charge of

the sub-divisions of the district: Reg. III of 1913, s. 2 (g).

⁷ This means the officer in chief executive charge of the district, by whatever other title he may be designated: *ibid.* s. 2 (c).

"Section 12.—(1) The immediate control and supervision of the Court of the Deputy Commissioner and of any other Court of equal or similar powers that may hereafter be established in accordance with the provisions of section 11 shall be vested in, and every such Court shall be subordinate to, the Court of the Commissioner. Control over Courts.

"(2) The immediate control and supervision of the above Courts and of any other similar Court that may be hereafter established under section 11 shall be vested in, and all such Courts shall be subordinate to, the Court of the Deputy Commissioner.

"Section 13. The Local Government may, by notification in the Bihar and Orissa Gazette, define the local limits of the jurisdiction and the powers of any Court established under this Regulation, or of any officer of the Government employed in the district." Local jurisdiction and powers of Courts

By section 14 the following are the ordinary powers of the Civil Courts of Justice : Power of Courts.

1. The Court of the Deputy Collector and Deputy Magistrate has powers corresponding to those of a Civil Court under the Code of Civil Procedure¹ to try original civil suits of which the value does not exceed one hundred rupees.

2. The Courts of the Sub-divisional officers of Angul and the Khondmals have similar powers to try original civil suits of which the value does not exceed five hundred rupees, and powers of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 ;² the limit of powers in each case to be decided by the Local Government.

3. The Court of the Deputy Commissioner has powers corresponding to those of a District Judge, as defined in the Code of Civil Procedure, 1908,³ to try original civil suits and appeals without limit as respects the value.

4. The Court of the Commissioner has powers corresponding to those of a High Court under the Code of Civil Procedure, 1908.³

The Local Government may, by notification in the Bihar and Orissa Gazette, confer upon any of such Courts any further powers in addition to those specified.⁴ Further powers.

"Section 32. The Court may, at any time, of its own motion, for reasons to be recorded in writing, refer any matter Reference to Village Panchayat.

¹ Act V of 1908.

² Act IX of 1887.

³ Act V of 1908.

⁴ Reg. III of 1913, s. 14 (2) (a).

arising in any suit to the arbitration of any village *panchayat* which has been vested by the Deputy Commissioner with powers in this behalf.

Reference to
arbitration.

“Section 33. Where any suit involves—

- (a) the examination or adjustment of accounts, or
- (b) questions of pedigree or local caste or of local or family custom, or
- (c) any other question of family law,

the Court may, of its own motion or on the application of any of the parties, and after recording its reasons in writing, refer to arbitration any matter of difference between the parties.

“Section 34. Notwithstanding anything contained in Schedule II of the Code of Civil Procedure, 1908 :—

Bar to
arbitration.

“(a) No matter in which any settlement proceeding or any interest of the Government is involved can be referred to arbitration.

“(b) No award which is contrary to any of the provisions of this Regulation shall have any effect.”

Appeal.

“Section 38.—(1) An original decree or order made by the Court of a Sub-divisional officer, the value of which does not exceed fifty rupees, shall, subject to the provisions of this Regulation as to revision, be final.

“(2) From every other decree or order made by the Court of a Sub-divisional officer and from every decree or order made in any civil or revenue suit by any other Court subordinate to the Court of the Deputy Commissioner, an appeal shall lie to the Court of the Deputy Commissioner.

“(3) An original decree or order made by the Court of the Deputy Commissioner in any civil or revenue suit, the value of which does not exceed five hundred rupees, shall, subject to the provisions of this Regulation with respect to revision, be final.

“(4) From every other original decree or order made by the Court of a Deputy Commissioner in any civil or revenue suit an appeal shall lie to the Court of the Commissioner.

“(5) Save as provided by sub-section (6) and subject to the provisions of the Regulation, with respect to revision, every appellate decree or order of the Court of the Deputy Commissioner in any civil or revenue suit shall be final.

“(6) An appeal from an appellate decree or order of the

Court of the Deputy Commissioner in a civil or revenue suit, the value of which exceeds one thousand rupees, and in which the Deputy Commissioner has reversed or modified the orders of the Lower Court, shall lie to the Court of the Commissioner.

“Section 39. The Commissioner or the Deputy Commissioner may, of his own motion or otherwise, call for the record of any Civil or Revenue case decided by any Court under his control and supervision, and may pass such order therein as he may think fit.” Revision.

Santhal Parganas.

The jurisdiction of the Courts of Civil Justice in the Santhal Parganas has been recently discussed in the cases of *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197 ; 42 Calc., 116 ; 18 C. W. N., 994 ; 16 Bom., L. R., 824, and *Darbari Panjara v. Bhoti Roy* (1914), 41 Calc., 915 ; 18 C. W. N., 575.

Before the making of the Santhal Parganas Justice Regulation, 1893,¹ there were two classes of Civil Courts, viz.,

1. Courts of settlement officers.

Classes of
Courts.

2. Courts of officers appointed under the Santhal Parganas Act, 1855,² by the Lieutenant-Governor of Bengal.

The following portions of the Santhal Parganas Act, 1855,³ are still in force. Santhal
Parganas Act.

The districts, a schedule of which is to be found in the Santhal Parganas Act, 1857,⁴ are placed under the superintendence and jurisdiction of an officer or officers appointed formerly by the Lieutenant-Governor of Bengal and now by the Governor of Bihar and Orissa and such officers are now subject to the direction and control of the Governor of Bihar and Orissa.⁵ Superintendence of
districts.

The directions must be consistent with Regulation V of 1893 (*post*, pp. 126 *et seq.*), and with all other enactments for the time being in force in the Santhal Parganas.⁶

The administration of civil justice is vested in the officer or officers to be so appointed. Administration
of justice.

Provided that all civil suits in which the matter in dispute exceeds the value of Suits exceeding
value of

¹ Reg. V of 1893.

² Act XXXVII of 1855.

³ *Ibid.*

⁴ Act X of 1857.

⁵ Act XXXVII of 1855, s. 1, cl. 2.

⁶ Reg. V of 1893, s. 27.

one thousand
rupees.

shall exceed the value of one thousand rupees shall be tried and determined according to the general laws and regulations.¹

The Santhal Parganas Regulation, 1893,² added a third class of Courts, namely Courts established under the Bengal, Agra, and Assam Civil Courts Act, 1887,³ and also made provisions as to the Courts established under the Santhal Parganas Act, 1855.⁴

PART I.—*Courts established under the Bengal, Agra, and Assam Civil Courts Act, 1887.*

Grades of
Courts estab-
lished under
Act XII of
1887.

The Courts established under the Bengal, Agra, and Assam Civil Courts Act, 1887, are—

- (1) The Court of the District Judge, and
- (2) The Courts of Subordinate Judges.⁵

Appointment
of Judges.

The Deputy Commissioner of the Santhal Parganas is the District Judge, and the Local Government may appoint any Sub-divisional officer to be a Subordinate Judge.⁶

Original
jurisdiction.

The jurisdiction of the District Judge or a Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure,⁷ to suits of which the value exceeds one thousand rupees,⁸ and which are not excluded from his cognizance by the Santhal Parganas Settlement Regulation⁹ or by any other law for the time being in force.

Provided that such jurisdiction does not extend to any suit for money in which the amount claimed, exclusive of interest, does not exceed five hundred rupees.¹⁰

As to the procedure, see Regulation V of 1893, section 10.

As to the enactments in force in the Santhal Parganas, see Regulation III of 1872, Schedule.

Appeals.

The course of appeals from decrees and orders in such

¹ Act XXXVII of 1855, s. 2. *Sardhari Sah v. Hukum Chand Sah* (1914), 41 Calc., 876; 18 C. W. N., 662; *Dungaram Marwary v. Rajkishore Deo* (1890), 18 Calc., 133.

Reg. V of 1893.

Act XII of 1887, ante, chap. x.

Act XXXVII of 1855, ante, p. 125.

Reg. V of 1893, s. 7.

Ibid. s. 8.

⁷ Act V of 1908.

⁸ As to a suit for rent, see *Darbari Panjara v. Bhoti Roy* (1914), 41 Calc.,

915; 18 C. W. N., 575.

⁹ Reg. III of 1872, s. 11, which provides that except as provided in s. 25A, no suit lies in any civil Court regarding any matter decided by any settlement Court under the rules made in accordance with that Regulation. Sec. 25A (inserted by s. 9 of Reg. III of 1908) allows a suit to find and determine the rights of zamindars and other proprietors as between themselves.

¹⁰ Reg. V of 1893, s. 9.

suits shall, where an appeal is allowed by law, be that prescribed in section 20, sub-section (1),¹ and section 21, sub-section (1)² of the Bengal, Agra, and Assam Civil Courts Act, 1887, and in section 100 (Second Appeals) of the Code of Civil Procedure,³ the expression "High Court" in the said section being construed to mean the High Court of Jurisdiction at Patna.⁴

During a settlement of the whole or part of the Santhal Parganas all suits in regard to—

Suits for land during settlement.

- (a) any land or any interest in, or arising out of, land, or
- (b) the rent or profits of any land, or
- (c) any village-headship or other office connected with any land,

must be brought before the settlement officers or the Court of officers appointed under the Santhal Parganas Act, 1855,⁵ and the Santhal Parganas Regulation, 1893.⁶

There is power to the officer to transfer the case to a Court established under Act XII of 1887.⁷

The general laws and regulations are applicable in the Santhal Parganas to suits exceeding one thousand rupees in value.⁸

As to the revisional jurisdiction of the High Court over Courts in the Santhal Parganas, see *post*, p. 128, and *ante*, p. 27.

PART II.—*Courts of Officers appointed under Section 2 of Act XXXVII of 1855.*

The Courts of officers appointed by the Governor under section 2 of Act XXXVII of 1855 are of four grades, namely:—

Grades of Courts of officers appointed under Act XXXVII of 1855.

- (1) the Court of the Commissioner (the Commissioner of the Bhaugulpore division);⁹
- (2) the Court of the Deputy Commissioner of the Santhal Parganas;¹⁰

¹ *Ante*, p. 111.

² *Ante*, p. 112.

³ Act V of 1908.

⁴ Reg. V of 1893, s. 10. *Sardhari Sah v. Hukum Chand Sah* (1914), 41 Calc., 876; 18 C. W. N., 662.

⁵ Act XXXVII of 1855.

⁶ Reg. V of 1893; Reg. III of 1872, s. 5; *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197; 42 Calc., 116; 18 C. W. N., 994; 16 Bom. L. R. 824; *Shah Deo v. Kusum*

Kumari (1918), 5 Pat. L. J., 164.

⁷ Reg. III of 1872, s. 5.

⁸ See Act XXXVII of 1855; Reg. III of 1872, s. 3; *Dungaram Marwary v. Rajkishore Deo* (1890), 18 Calc., 133; *Maha Prasad v. Ramani Mohan Singh* (1914), 41 I. A., 197; 42 Calc., 116; 18 C. W. N., 994; 16 Bom. L. R., 824.

⁹ Reg. V of 1893, s. 3 (1).

¹⁰ *Ibid.* s. 3 (2).

(3) the Courts of sub-divisional officers ;

(4) the Courts of Deputy Collectors not in charge of a sub-division and Sub-deputy Collectors.¹

Number and jurisdiction of inferior Courts.

The Local Government may fix and vary the number of Courts of sub-divisional officers and of Deputy Collectors not in charge of a sub-division and Sub-deputy Collectors, and the local limits of the jurisdiction of those Courts.²

Original jurisdiction of Courts.

Except as otherwise provided by any other enactment for the time being in force, jurisdiction with respect to suits which are not cognizable either by a Court established in the Santhal Parganas under the Bengal, Agra, and Assam Civil Courts Act, 1887, or by a Settlement officer under the Sonthal Parganas Settlement Regulation³ shall be had—

(a) up to the value of one hundred rupees or such other value not exceeding five hundred rupees as the Local Government may prescribe by the Court of a Deputy Collector not in charge of a sub-division, or Sub-deputy Collector ; and

(b) without limit as regards the value by the Court of a Sub-divisional officer or the Court of the Deputy-Commissioner.⁴

Court of Commissioner to be High Court and Court of Deputy Commissioner to be District Court.

Subject to the first proviso to section 2 of Act XXXVII of 1855,⁵ and of section 10 of Regulation V. of 1893⁶ with respect to the jurisdiction of the High Court at Patna in relation to suits cognizable by Courts established under the Bengal, Agra, and Assam Civil Courts Act, 1887,⁷ and subject also to the following provisions of the Indian Divorce Act⁸ and of any other enactment for the time being in force, the Court of the Commissioner is, for the purpose of all enactments relating to civil jurisdiction for the time being in force, deemed to be the High Court for the Santhal Parganas.⁹

District Court.

Subject to the provisions of the same proviso with respect to the trial and determination of suits of value exceeding Rs.1,000 which are within the cognizance of a Court established in the Santhal Parganas under the Bengal, Agra, and Assam Civil Courts Act, 1887, and subject also to the provisions of sub-section (3) and of any rules and orders for

¹ Reg. V of 1893, s. 12.

² *Ibid.* s. 13.

³ Reg. III of 1872.

⁴ Reg. V of 1893, s. 14.

⁵ *Ante*, pp. 125, 126.

⁶ *Ante*, p. 127.

⁷ Act XII of 1887.

⁸ *Post*, pp. 449-453.

⁹ Reg. V of 1893, s. 15 (1). See *Darbari Panjari v. Bhoti Roy* (1914), 41 Cal., 915 ; 18 C. W. N., 575.

the time being in force under section 10 of the Santhal Parganas Settlement Regulation, the Court of the Deputy Commissioner is the principal Civil Court of original jurisdiction and the District Court for the Santhal Parganas :

Provided that the Governor may direct that the Court of a Sub-divisional Officer shall for the purpose of any specified enactment be deemed to be the District Court for the local area within its jurisdiction.¹

For the purposes of the Indian Divorce Act (IV of 1869) the Commissioner is deemed to be the District Judge and the High Court of Jurisdiction at Patna to be the High Court.²

The general superintendence and control over Civil Courts of all other grades are vested in, and all such Courts are subordinate to, the Court of the Commissioner.³ Subject thereto the Deputy Commissioner controls all Civil Courts of the third and fourth grades.⁴ Control over Courts.

Subject to the following provisions as to revision, a decree or order made in an original suit of value not exceeding fifty rupees by a Sub-divisional Officer, or in an original suit of value not exceeding one hundred rupees by the Deputy Commissioner, shall, if no question of title to immovable property or to any office connected with such property was directly or indirectly at issue in the suit, be final.⁵ Appeals from original decrees or orders.

From every other decree or order in an original suit an appeal lies, when the decree or order was made—

- (a) by a Deputy Collector not in charge of a sub-division or by a Sub-deputy Collector, to the Sub-divisional Officer ; provided that the Deputy Commissioner can order any such appeal to be transferred to his own file ;
- (b) by a Sub-divisional Officer to the Deputy Commissioner ;
- (c) by the Deputy Commissioner to the Commissioner.⁶

Subject to the provisions as to revision, an appellate order or decree is final in all cases where the decision of the Lower Court is affirmed, and no second appeal is allowed except where the Sub-divisional Officer or Deputy Commissioner has varied the decision of the Lower Court. In this case an appeal lies to the Commissioner. Second appeals.

¹ Reg. V of 1893, s. 15 (2).

² *Ibid.* s. 15 (3).

³ *Ibid.* s. 16 (1).

⁴ *Ibid.* s. 16 (2).

⁵ *Ibid.* s. 17 (1).

⁶ *Ibid.* s. 17 (2).

The appellate order or decree upon a second appeal is in all cases final.¹

Revision.

The Commissioner or Deputy Commissioner may, of his own motion or otherwise, call for the record of any case decided by a Court under his control in which an appeal does not lie or in which, for cause shown to his satisfaction, an appeal has not been preferred within the time limited therefor, and may pass such order in the case as he thinks fit.²

The Deputy Commissioner may, by order in writing, empower any Sub-divisional Officer under his control to exercise the powers conferred on the Deputy Commissioner by the above provision with respect to the decisions of all or any of the Courts of Deputy Collectors not in charge of a sub-division, or Sub-deputy Collectors, under the control of the Deputy Commissioner.³

Distribution of business.

The Deputy Commissioner may, by order in writing, direct that any civil business cognizable by him and the Courts under his control shall be distributed among those Courts in such manner as he thinks fit:

Provided that no such direction shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.⁴

Transfer of proceedings.

The Commissioner or Deputy Commissioner may withdraw any suit or other proceeding pending in any Court under his control and try it himself or refer it for disposal to any other Court under his control and competent to try it.⁵

Decrees and orders not reversible on technical grounds alone.

A decree or order made by the Court of an officer appointed under section 2 of Act XXXVII of 1855⁶ shall not be reversed or altered on appeal or revision on account of any irregularity of procedure, unless the irregularity has occasioned or is likely to occasion a failure of justice.⁷

Chota Nagpur.

Chota Nagpur is a Scheduled District.⁸

As to the Chota Nagpur Tenancy Act, 1908,⁹ see *post*, pp. 572, 578.

¹ Reg. V of 1893, s. 18.

² *Ibid.* s. 19 (1).

³ *Ibid.* s. 19 (2).

⁴ *Ibid.* s. 20.

⁵ *Ibid.* s. 21.

⁶ *Ante*, p. 125.

⁷ Reg. V of 1893, s. 23.

⁸ Act XIV of 1874, s. 1, Sch. I, Pt. III, No. IV; Act XV of 1874, s. 2, Sch. VI, Pt. III.

⁹ Ben. Act VI. of 1908.

Bihar Panchayats.

In Bihar Panchayats have exclusive jurisdiction in—

Panchayats
in Bihar.

(a) Suits for money due on contracts.

(b) Suits for the recovery of movable property, or the value of such property, and suits for compensation for wrongfully taking or injuring movable property, when the value of the suit does not exceed twenty-five rupees, or if especially empowered by the Local Government when the value exceeds twenty-five and does not exceed one hundred rupees.¹ Panchayats have concurrent jurisdiction in the above classes of suit when the value does not exceed two hundred rupees, rent suits of a value not exceeding twenty-five rupees, and, if the Local Government directs, other suits for the recovery of money or movable property.²

There are also special powers in the case of aboriginal Panchayats in Chota Nagpur.³

No suit shall lie in any Panchayat—

- (1) on a balance of partnership account, or
- (2) except under section 59, for a share or part of a share under an intestacy or for a legacy or part of a legacy under a will, or
- (3) by or against Government or public officers in their official capacity, or
- (4) by or against minors or persons of unsound mind, unless represented by a guardian recognised by the Panchayat, or
- (5) for the assessment, enhancement, or apportionment of rent or immovable property, or
- (6) by a mortgagee of immovable property for the enforcement of the mortgage by foreclosure or sale of the property or otherwise, or by a mortgagor of immovable property for the redemption of the mortgage.⁴

As to the local limits of the jurisdiction of the Panchayat, see B. & O. Act III of 1922, s. 61.

¹ B. & O. Act III of 1922, s. 57.

² *Ibid.* s. 58.

³ *Ibid.* s. 59.

⁴ *Ibid.* s. 60.

CHAPTER XIII.

MUNSIFS' AND VILLAGE COURTS IN THE UNITED PROVINCES.

Honorary
Munsifs,
United
Provinces.

IN addition to the Courts constituted by the Bengal, Agra, and Assam Civil Courts Act, 1887,¹ provision is made in the United Provinces of Agra and Oudh for Benches of Honorary Munsifs by the United Provinces² Honorary Munsifs Act, 1896,³ and for village Courts by the United Provinces Panchayat Act, 1920.⁴

Power to
appoint Honorary
Munsifs.

In the former Act the following provisions are to be found :—

“Section 4. The Local Government may, by notification in the Gazette, appoint any person to be an Honorary Munsif, and may in like manner cancel such appointment.

Benches of
Honorary
Munsifs.

“Section 5.—(1) The Local Government may, by notification in the Gazette, appoint any two or more Honorary Munsifs by name to be members of a Bench, and make rules respecting the constitution of such Bench.

“(2) While such notification remains in force the powers of such Honorary Munsifs shall, subject to the provisions of this Act, be exercised by the Bench so constituted, and not otherwise.

Status of Honorary
Munsifs
and Benches.

“Section 6. Every Honorary Munsif appointed under section 4, and every Bench constituted under section 5 shall be deemed to be a Munsif within the meaning of the Bengal, Agra, and Assam Civil Courts Act, 1887,⁵ or of the Oudh Civil Courts Act, 1879,⁶ as the case may be, and, save as hereinafter excepted, all the provisions of those Acts applicable to Munsifs shall apply, as far as may be, to all Honorary Munsifs and Benches in the Province of Agra and in Oudh⁷ respectively.

Jurisdiction.

“Section 7.—(1) Subject to the provisions of this Act, the jurisdiction of an Honorary Munsif or of a Bench shall

¹ Act XII of 1887, *ante*, chap. x.

² See United Provinces General
Clauses Act, 1904 (U. P. Act I of
1904, s. 28 (2)).

³ U. P. Act II of 1896.

⁴ U. P. Act VI of 1920.

⁵ Act XII of 1887, *ante*, chap. x.

⁶ Act XIII of 1879, *post*, chap. xxi.

⁷ Now the United Provinces of
Agra and Oudh, see *ante*, p. 106, note.

be concurrent with that of the Munsif, or, where there is no Munsif, with that of the Subordinate Judge.

“(2) An Honorary Munsif or Bench shall not take cognizance of any suit specified in the second schedule of the Provincial Small Cause Courts Act, 1887, as excepted from the cognizance of a Court of Small Causes.¹

“(3) Subject to the exceptions specified in that schedule and to the provisions of this Act, the jurisdiction of an Honorary Munsif extends to all original suits of a civil nature, the value of the subject-matter of which does not exceed two hundred rupees.

“(4)² Nothing in section 16 of the Provincial Small Causes Courts Act of 1887³ shall be deemed to affect the jurisdiction of Honorary Munsifs or Benches under this Act, and no powers exercised, or orders issued, by an Honorary Munsif or Bench since the commencement of this Act shall be deemed to have been exercised or issued illegally and without jurisdiction merely by reason of the operation of the aforesaid section.

“Section 8.—(1) No suit or proceeding other than an ^{Institution of suits.} application of the kind specified in sub-section (1) of section 11 shall be instituted in the Court of any Honorary Munsif or Bench, but an Honorary Munsif or a Bench shall try the suits transferred to the Court of such Honorary Munsif or Bench as provided in sub-section (2).

“(2)⁴ The District Judge shall, from time to time, having ^{Transfer.} regard to the number of cases pending in the respective Courts, transfer for trial from the Court of the Subordinate Judge or of the Munsif or the Small Cause Court Judge to the Court of an Honorary Munsif or Bench, such number of cases cognizable by such Honorary Munsif or Bench as he deems advisable :

“Provided that the last paragraph of section 25 of the Code of Civil Procedure⁵ shall not be deemed applicable to cases so transferred from Courts of Small Causes, and that, except with the written consent of all the parties, no case in which the issues have already been framed, shall be so transferred.

“(3) The Local Government may, by notification in the

¹ *Post*, pp. 279–287.

² This sub-section was inserted by s. 1 of the United Provinces Honorary Munsifs (Amendment) Act, 1904 (U. P. Act II of 1904).

³ Act IX of 1887, *post*, p. 272.

⁴ This sub-section was substituted by U. P. Act II of 1904, s. 2.

⁵ Now represented by s. 24 of Act V of 1908.

Gazette, direct that the provisions of sub-sections (1) and (2) shall not apply to any specified Honorary Munsif or Bench.

“(4) When a notification has been issued under sub-section (8), the District Judge shall assign to the Honorary Munsif or Bench specified therein such civil business cognizable by such Honorary Munsif or Bench as, subject to any general or special orders of the High Court, he thinks fit.”

As to the procedure in suits tried by Honorary Munsifs and Benches, see section 9 of the Act.

Judgment and
orders of
Benches.

“Section 10.—(1) The opinion of the majority of the members of the Bench shall prevail, and be deemed to be the decision of the Bench.

“(2) Subject to the provisions of sub-section (1), the Local Government may, after consultation with the High Court, make rules respecting the mode of settling differences of opinion which may arise between the members of a Bench.

“(3) In making rules under sub-section (2) the Local Government may direct—

(a) that the Bench shall forward the record of the case in which such difference of opinion has arisen to the District Judge for orders;

(b) that the District Judge shall transfer the case for decision of the question in respect of which such difference of opinion has arisen in any Court subordinate to him having jurisdiction, and that the Bench shall dispose of the case in conformity with such decision; or

(c) that the District Judge shall withdraw the case from the Bench and try it himself or transfer it for trial to any Court subordinate to him having jurisdiction.

“(4) When any subordinate Court has decided any question under clause (b) of sub-section (3), such subordinate Court shall not try any appeal from any decree or order passed by the Bench in any case in which such question has been so decided.

Procedure in
suits after
decree.

“Section 11.—(1) When an Honorary Munsif or a Bench has passed a decree in any suit, such Honorary Munsif or Bench shall, except for the purpose of applications under Order 9, rules 4, 9 and 13; Order 17, rule 2; s. 152; Order 22, rule 9 (1) and (2); s. 114; Order 47, rule 1 of Act V of 1908, cease to exercise any further jurisdiction in respect of such suit.

"(2) For the purposes of execution and proceedings after decree, other than those specified in sub-section (1), the judgments, decrees, and orders passed by an Honorary Munsif or Bench shall be deemed respectively to be judgments, decrees, and orders of the Munsif's Court, or, where there is no Munsif, of the Subordinate Judge's Court.

"(3) Where there are more Munsifs than one having concurrent local jurisdiction, the District Judge shall determine which one of them shall be deemed to be the Munsif for the purposes of sub-section (2) :

"Provided that the Local Government may, by notification in the Gazette, direct that the provisions of this section shall not apply to any specified Honorary Munsif or Bench."

"Section 13. Nothing in the following sections of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, and the Oudh Civil Courts Act, 1879, shall apply to Honorary Munsifs and Benches, viz. :—

Exception of certain sections of Acts XII of 1887 and XIII of 1879.

"Act XII of 1887

- Section 7.¹ Vacancies among Munsifs.
- Section 12.² Temporary charge of office of Munsif.
- Section 19.³ Extent of jurisdiction of Munsif.
- Section 23.⁴ Exercise by Munsif of jurisdiction of District Courts in certain proceedings.
- Section 24.⁵ Disposal of proceedings referred to in section 23.
- Section 25.⁶ Power to invest Munsifs with Small Cause Court jurisdiction.
- Section 31.⁷ Appointment and removal of ministerial officers of other Courts.

¹ *Ante*, p. 107.

² *Ante*, p. 109.

³ *Ante*, p. 111.

⁴ *Ante*, p. 113.

⁵ *Ante*, p. 114.

⁶ *Ante*, p. 114.

⁷ *Ante*, p. 115.

Section 17.¹ Extent of jurisdiction of Munsif.

Section 24.² Power to invest with Small Cause Court jurisdiction.

"Act XIII of 1879 {

Section 34. Removal, etc., of ministerial officers of Munsifs' Courts."

The United Provinces Village Panchayat Act, 1920,³ contains the following provisions:—

Establishment of panchayats.

"Section 4. In any district or part of a district to which this Act has been applied, the Collector may, in accordance with rules made under this Act, establish a panchayat within and for any village⁴ or group of adjacent villages.

Number of panches.

"Section 5. A panchayat shall consist of such number of panches not being less than five or more than seven as the Collector may from time to time and in each case think suitable.

Appointment of panches.

"Section 6. Panches shall be appointed by the Collector in the prescribed manner, and shall hold office for such period as may be prescribed:

"Provided that no person not residing within the circle for which a panchayat has been established shall be eligible for appointment as panch of that panchayat.

Sarpanch.

"Section 7. In each panchayat, one panch shall be appointed by the Collector in the prescribed manner to preside over the panchayat. The panch so appointed shall be called sarpanch, and such powers may be assigned to him as may be prescribed.

Suspension and removal of panches.

"Section 8. The Collector may, by an order in writing, suspend or remove any panch or sarpanch for misconduct, incapacity, neglect of duty or other sufficient cause.

¹ *Post*, p. 240.

² *Post*, p. 241.

³ U. P. Act VI of 1920. S. 2 of this Act repealed the United Provinces Village Courts Act, 1892 (U. P. Act III of 1892).

⁴ "Village" means any local area recorded as a village in the revenue records of the district in which it is

situated, but does not include any area included in the limits of a municipality, cantonment, town area as defined in the United Provinces Town Areas Act, 1914 (U. P. Act II of 1914), or notified area as defined in s. 397 of the United Provinces Municipalities Act, 1916 (U. P. Act II of 1916).

"Section 9. When any panch dies, resigns or is removed the Collector may appoint a panch in the prescribed manner to fill his place: provided that no vacancy in the panchayat shall render its proceedings illegal so long as the number of panches is not reduced below three. Filling vacancies in panchayat.

"Section 10. The Collector with the written approval of the Commissioner may, by an order in writing, suspend or dissolve any panchayat for misconduct, neglect of duty, or other sufficient cause. Suspension and dissolution of panchayat.

"Section 11. An order passed by the Collector under section 8 or section 10 shall be final. Collector's order final.

"Section 12. A panchayat shall sit at such place or places within the limits of its circle as may be fixed by it with the approval of the Collector. Place of sitting.

"Section 13. For the transaction of any business three panches, including the presiding panch, shall form a quorum. Quorum.

"Section 14.—(1) The sarpanch shall preside over every meeting of the panchayat at which he is present. If he is absent such panches as are present shall elect one of their number to preside at the meeting. Sarpanch to preside.

"(2) No business shall be transacted at any meeting unless a panch, able to read and write, is present and preside at the meeting."

"Section 16. The following suits shall be cognizable by panchayats, namely— Suits cognizable by panchayats.

- (a) suits for money due on contracts not affecting any interest in immovable property,
- (b) suits for the recovery of movable property, or for the value of such property,
- (c) suits for compensation for wrongfully taking or injuring movable property, when the amount or value of the claim does not exceed twenty-five rupees:

"Provided that no suit shall be brought before any panchayat—

- (1) on a balance of partnership account;
- (2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will;
- (3) by or against the Government or a public officer in his official capacity;
- (4) by or against a minor or a person of unsound mind;

(5) on account of any dispute or matter in which any suit or application may be brought or made in a Revenue Court."

Enhanced powers.

"Section 24. Panchayats which are specially empowered by the Local Government in this behalf shall exercise the following enhanced powers:—

"(1) To hear and determine suits of the nature described in section 16, when the amount or value of the claim does not exceed fifty rupees.

Panch interested.

"Section 25. No panch who is a party to, or personally interested in, any suit or case shall sit on a panchayat which takes cognizance of such suit or case."

Panchayat before which suit to be instituted.

"Section 29. Every suit instituted under this Act shall be instituted before the panchayat of the circle in which the defendant or each of the defendants, where there are more than one, reside at the time of the institution of the suit, irrespective of the place where the cause of action accrued."

Exclusive jurisdiction in suits.

"Section 32. No Court shall take cognizance of any suit which is cognizable under this Act unless or until the Collector has passed an order in writing under section 71."

As to the procedure, see Chapter IV of the Act.

Majority to prevail.

"Section 44. Decisions shall, in the event of the panches disagreeing, be in accordance with the opinion of the majority. Should opinions be equally divided, the presiding panch shall have a second or casting vote."

Reference of important suits.

"Section 51. When any panchayat having jurisdiction is of opinion that any suit or case before it is of such a nature, or of such intricacy or importance that it ought to be tried in a regular Court, it shall stay proceedings and report the matter to the Collector for orders.

Decree without jurisdiction.

"Section 52. Except as provided by section 71 no order or decree of a panchayat shall be called in question in any Court on the ground that it was passed without jurisdiction.

No appeal.

"Section 53. There shall be no appeal from any decree or order passed by a panchayat in any suit under this Act and except as provided in sections 49 (suit dismissed for default or where *ex parte* decree) and 71 no Court or authority shall have power to revise any such decree or order."

"Section 71.—(1) The Collector may at any time, whether on a reference by a panchayat under section 51¹ or on his own motion, by order in writing—

Collector may
cancel jurisdic-
tion or quash
proceedings.

- (a) cancel the jurisdiction of a panchayat with respect to any suit or case, or
- (b) quash any proceedings of a panchayat at any stage, or
- (c) cancel any order or decree passed by a panchayat.

"Where this has been done the plaintiff may institute a suit for the same relief in the Civil Court." ²

As to the delegation of powers by the Collector, see section 74.

Ante, p. 138.

¹ S. 71 (2).

CHAPTER XIV.

PRESIDENCY OF BOMBAY.

Tenures and
land.

IN the territories subject to the Presidency of Bombay, except the Scheduled Districts, all suits in regard to tenures and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land is claimed, shall be brought in the Court of the District Judge, and the Courts subordinate thereto, and not in the Courts of Revenue.¹

Muchandi
exempted from
Acts.

By Bombay Act III of 1863, s. 8, the village of Muchandi, pargana Jath, in the territory of Satara, is excluded from the operation of the Regulations and Acts of the Presidency of Bombay.

Courts of Civil
Justice.

In addition to the Bombay High Court there are the following Courts of Civil jurisdiction in the Presidency of Bombay:—

1. Courts under the Bombay Civil Courts Act.²

2. The Court of the Agent for the trial of suits against Dekkhan Sirdars.³

3. Courts of Jagirdars and of Saranjamidars,⁴

4. Courts of Mamlatdars.⁵

5. Village Munsifs.⁶

6. Small Cause Courts.⁷

Bombay Civil
Courts Act.

The Bombay Civil Courts Act, 1869⁸ (as amended by Bombay Act I of 1900), extends only to the territories under the Governor of Bombay in Council (outside the town of Bombay) other than Sindh and the scheduled districts, but

¹ Act XVI of 1838, s. 1, as amended by Acts XIV of 1870, and X of 1876.

² Below.

³ *Post*, pp. 150–152.

⁴ *Post*, pp. 153, 154.

⁵ *Post*, pp. 154–157.

⁶ *Post*, pp. 160, 161.

⁷ *Post*, chaps. xxiv, xxv.

⁸ Act XIV of 1869.

the Governor of Bombay in Council may extend the Act to such districts and to Sindh.¹

The Act as amended contains the following provisions:—

“Section 3. The Governor of Bombay in Council may from time to time, by notification in the Government Gazette, alter the limits of existing districts and create new districts for the purposes of this Act. Alteration and creation of districts.

“Section 4. The Governor of Bombay in Council may also from time to time, by notification in the Government Gazette, alter the position of the sadar station in any district, and fix the position of the sadar station in any new district.

“Section 5. There shall be in each district a District Court presided over by a Judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council, by whose authority only he shall be liable to be suspended or removed from his appointment. District Judges.

“Section 6. The District Judge shall ordinarily hold the District Court at the sadar station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district. Situation of District Court.

“Section 7. The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure.² Original jurisdiction of District Court.

“Section 8. Except as provided in sections 16, 17, and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. Appellate jurisdiction of District Court.

“Section 9. The District Judge shall have general control over all the Civil Courts and their establishments within the district.” Control of Courts.

“Section 12.³ The Governor of Bombay in Council may appoint in any district a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court. Joint Judges.

¹ *Ibid.* s. 1. As to the places to which the Act has been extended, see Bombay Rules and Orders, vol. ii, ed. 1898, pp. 15, 16, s. 22. As to certain territory ceded for the purposes of the Bombay, Baroda, and

Central India Railway, see Bombay Act III of 1918.

² Act V of 1908, s. 2 (4).

³ As amended by Bombay Act I of 1910, Sch. II.

Enactments
applied to
Joint Judge.

"Section 13. All Regulations and Acts applying to a District Judge shall be deemed to apply also to the Joint Judge.

Power to
appoint Assist-
ant Judges.

"Section 14. The Governor of Bombay in Council, under the general control of the Governor-General of India in Council, may appoint one or more assistants to the District Judge, and may suspend or remove from his appointment any assistant so appointed.

Situation of
Assistant
Judge's Court.

"Section 15. An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the district, whenever the District Judge shall, with the previous sanction of the High Court, direct him to do so.

Original juris-
diction of
Assistant
Judge.

"Section 16.¹ The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to ten thousand rupees in amount or value, applications or references under Special Acts, and miscellaneous applications or references not being of the nature of appeals.

"The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications and references."

As to proceedings under the Probate and Administration Act (V of 1881), see *Laxmi v. Aba* (1908), 32 Bom., 684; 10 Bom. L. R., 924.

As to cases under the Land Acquisition Act, 1894,² see *Ranchhodhbhai v. Collector of Kaira* (1909), 33 Bom., 871; 11 Bom. L. R., 317; *Ahmedbhoy Habibbhoy v. Waman Dhondus* (1913), 38 Bom., 387; 16 Bom. L. R., 72; *First Assistant Collector of Prant Basscin v. Ardesir Framji Moos* (1891), 16 Bom., 277.

Section 16 does not justify a reference to an Assistant Judge to try a suit under the Indian Divorce Act (IV of 1869).³

"Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed five thousand rupees.

Appellate
jurisdiction of
Assistant
Judge.

"Section 17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts⁴ as would lie to the District Judge and as may be referred by him to the Assistant Judge.

¹ As amended by Act VII of 1890, and Bombay Act I of 1900, s. 15.

² Act I of 1894.

³ *French v. French* (1914), 39 Bom.,

186; 16 Bom. L. R., 754.

⁴ This includes an assistant judge: *Shantappa v. Ramchandra* (1917), 19 Bom. L. R., 852.

"Decrees and orders passed under this section by an Assistant Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge."

The District Judge cannot take up the case when it has been decided by the Assistant Judge in accordance with the law.¹

"Section 18. A person filling the office of Assistant Judge, on whom the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge, without reference to the district in which he may be employed :

Continuance of Assistant Judges' appellate jurisdiction.

"Provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

"Section 19. The Governor of Bombay in Council may, by notification in the Government Gazette, invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

Power to invest Assistant Judge with powers of District Judge.

"The jurisdiction of an Assistant Judge so invested shall *pro tanto* exclude the jurisdiction of the District Judge from within the said limits.

"Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits."

"Section 21. There shall be in each district so many Civil Courts subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor-General of India in Council, shall from time to time direct :

Number of subordinate Civil Courts.

"Provided² that for special reasons it shall be lawful for the Governor of Bombay in Council at any time to close temporarily any such Subordinate Court.

"Section 22. The Judges of such Subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

Appointment of Subordinate Judges.

"No person shall be appointed a Subordinate Judge unless

¹ *Sakharam Lakshman v. Govind Joti* (1890), 15 Bom., 107.

² Bom. Act I of 1900, s. 8.

he be a subject of His Majesty¹ or a subject of a Native Prince or State in India under the suzerainty of His Majesty, and is also a person who has practised three years² as an advocate of a High Court in India or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such tests as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of Laws in the University of Bombay.

Power to fix local limits of jurisdiction of Subordinate Judges.

"Section 22A.³ The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time alter, the local limits of the ordinary jurisdiction of the Subordinate Judges.

Situation of Subordinate Courts.

"Section 23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may from time to time appoint within the local limits of their respective jurisdictions.

"Provided⁴ that for special reasons it shall be lawful for the Governor of Bombay in Council to order that a Subordinate Judge shall hold his Court at a place outside the local limits of his jurisdiction.

"Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

"The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall, subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court.

Appointment of Joint Subordinate Judges.

"For the purpose of assisting the Judge of any subordinate Court in the disposal of the civil business on his file, the Governor of Bombay in Council may appoint to such Court one or more Joint Subordinate Judges, or the District Judge may, with the previous sanction of the High Court, depute to such Court the Judge of another subordinate Court within the district. A Subordinate Judge thus appointed or deputed to

¹ Bom. Act III of 1895, s. 2.

⁴ Inserted by Bom. Act I of 1900,

² Bom. Act V of 1912, s. 1.

s. 4.

³ Inserted by Act IX of 1880, s. 2.

assist in the Court of another Subordinate Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Judge of such Court.¹

“For the purpose of this section the provisions of the Act applicable to Subordinate Judges shall be, and shall be deemed always to have been, applicable to Joint Subordinate Judges: Provided that no such Joint Subordinate Judge shall hear and determine any suit instituted under section 4 of the Dekkhan Agriculturists’ Relief Act, 1879,² unless the value of the said suit falls within the limits of the pecuniary jurisdiction conferred on him by that Act.³

Provisions applicable to Joint Subordinate Judges.

“Section 24. The Subordinate Judges shall be of two classes.

Classes of Subordinate Judges.

“The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature⁴ wherein the subject-matter does not exceed in amount or value five thousand rupees.

Jurisdiction of Subordinate Judge of second class.

“Section 25. A Subordinate Judge of the first class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature,⁴ wherein the subject-matter exceeds five thousand rupees in amount or value,⁵ as may arise within the local jurisdictions of the Courts in the district presided over by Subordinate Judges of the second class.

Special jurisdiction of Subordinate Judge of first class.

“In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

“Section 26. In all suits decided by a Subordinate Judge of the first class⁶ in the exercise of his ordinary and special original jurisdiction of which the amount or value of the subject-matter⁷ exceeds five thousand rupees,⁸ the appeal from his decision shall be direct to the High Court.⁹

Appeals from his decision.

¹ Bom. Act I of 1900, s. 4.

² Act XVII of 1879.

³ Bom. Act I of 1900, s. 4.

⁴ *Post*, pp. 294-299.

⁵ *Lakshman v. Babaji* (1883) 8 Bom., 81.

⁶ *Shet Kavasji v. Dinshaji* (1897), 22 Bom., 968.

⁷ *Motichand Jaichand v. Dadabhai Pestanji* (1874), 11 Bom. H. C., 186.

⁸ As to an application in respect of a sum less than Rs.5,000, see *Krishnarav Venkatesh v. Vasudev Anant* (1874), 11 Bom. H. C., 15; *Moulakhan v. Gorikhan* (1890), 14 Bom., 627.

⁹ *Shidappa Venkatrao v. Rachappa*

Appellate
jurisdiction of
Subordinate
Judge of first
class or Judge
of Court of
Small Causes.

"Section 27. The Governor of Bombay in Council may invest any Subordinate Judge of the first class [or¹ any Judge of the Court of Small Causes established under the Provincial Small Cause Courts Acts, 1887,² in any place to which this section extends]¹ with power to hear³ appeals from such decrees and orders of Subordinate Courts as may be referred to him by the Judge of the district.

"Decrees and orders so passed in appeal by a Subordinate Judge of the first class [or a Judge of the Court of Small Causes]¹ shall have the same force as if passed by a District Judge.

⁴ "A Subordinate Judge of the first class or a Judge of the Court of Small Causes, on whom the power of hearing appeals has once been conferred under this section, shall continue to have this power so long and so often as he may fill the office of Subordinate Judge of the first class or Judge of a Court of Small Causes respectively, without reference to the district in which he may be employed: Provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

Power to
invest Sub-
ordinate
Judges with
Small Cause
powers.

"Section 28. The Governor of Bombay in Council may invest within such local limits as he shall from time to time appoint, any Subordinate Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts up to such amount as he may deem proper, not exceeding in the case of any Subordinate Judge of the first class one thousand rupees, and in the case of any Subordinate Judge of the second class two hundred rupees.⁵

"The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

Power to
invest Sub-
ordinate
Judges with
jurisdiction
under certain
Acts.

"Section 28A.⁶—(1) The High Court may by general or special order invest any Subordinate Judge, within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a

Subrao (1912), 36 Bom., 628; 14 Bom. L. R., 757.

¹ Inserted by Bom. Act I of 1900, s. 4.

² IX of 1887, *post*, chap. xxv.

³ This includes a power to determine questions of limitation: *Mulna Amad v. Krishnaji Ganesh Godbole* (1890), 14 Bom., 594.

⁴ Bom. Act I of 1900, s. 5.

⁵ *Ibid.* s. 6. Act XVII of 1879 (*Dekkhan Agriculturists' Relief*), s. 5, prohibits the investment of a Subordinate Judge with the powers of a Small Cause Court Judge in places where that Act is in force (*post*, p. 157).

⁶ Inserted by Bom. Act. V of 1912, s. 2.

District Judge or a District Court as the case may be under the Indian Succession Act, 1865,¹ the Probate and Administration Act, 1881,² or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908.³

“(2) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject-matter exceeds or does not exceed five thousand rupees.

“(3) Every order of the District Judge passed on such appeal is subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees” (*post*, pp. 342-345).

“Section 32. No Subordinate Judge or Court of Small Causes shall receive or register a suit⁴ in which the Government or any officer of Government in his official capacity is a party,⁵ but in every case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19)⁶ such suit shall be instituted.”⁷

Reference of Government suits.

This has no application to a Mamlatdar's Court.⁸

“Provided⁹ that nothing in this section shall be deemed to apply to any suit merely because—

(a) a Municipal Corporation constituted under Bombay Act VI of 1873,¹⁰ or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

(b)¹¹ an officer—

(i) of a Court who has been appointed under the

¹ Act X of 1865, *post*, chap. xxxi.

² Act V of 1881, *ibid*.

³ Act V of 1908. This refers to the case of a District Court holding at the instance of the Collector an inquiry as to decree-holders, and claimants to immovable property sought to be sold in execution.

⁴ This does not prevent execution of a decree, when the property has after the decree come under the Court of Wards: *Bandoo Krishna v. Narasingrao* (1914), 38 Bom., 662; 16 Bom. L. R., 527.

⁵ This includes a suit against an

Administrator-General: *Antone v. Administrator-General* (1904), 28 Bom., 529; 6 Bom. L. R., 546; or against a Collector who has been appointed a Court of Wards: *Silva v. Minizis* (1912), 37 Bom., 313.

⁶ *Ante*, p. 143.

⁷ This paragraph was substituted by Act X of 1876, s. 15.

⁸ *Of. Balvantrao v. Sprott* (1899), 23 Bom., 761; 1 Bom. L. R., 414.

⁹ Act XV of 1880, s. 3.

¹⁰ See now Bom. Act III of 1901.

¹¹ Clause substituted by Bom. Act III of 1895, s. 3.

Code of Civil Procedure, section 456, last paragraph;¹

- (ii) of Government to whom the powers of a curator have been delegated under section 5 of Act XIX of 1841,² or who has been appointed manager of the estate of a lunatic under section 9 of Act XXXV of 1858,³ or who has been appointed or declared by a Court in virtue of his office to be a guardian of the person or property, or both, of a minor under the Guardian and Wards Act, 1890,⁴ or⁵
- (c) an officer of the Government—
 - (i) who has been declared or appointed to be the sole member or one of a board constituting a Court of Wards, or
 - (ii) to whom all or any of the powers of a Court of Wards have been delegated, or
 - (iii) through whom all or any of the powers of a Court of Wards are exercised, or
 - (iv) who has been appointed a manager of the property of a Government Ward, or
 - (v) who has been appointed a guardian of the person of a Government Ward, or
 - (vi) who has been appointed a guardian of the person or property, or both, of a minor under section 3, sub-section (1) of section 19, section 20, sub-section (1) of section 22, or sub-section (1) of section 41, respectively of the Bombay Court of Wards Act, 1905,⁶

is in virtue of such declaration, appointment, delegation or exercise of powers a party to such suit."

Privileges of Government in suits in which it is concerned.

By section 16 of the Bombay Revenue Jurisdiction Act, 1876—⁷:

"Whenever any suit is brought in any District Court against Government,

or against any Revenue officer, and the Local Government undertakes the defence thereof, it shall be lawful for the Local Government, by certificate signed by a Secretary thereto, to require—

¹ See now Act V of 1908, Sch. I, O. 32, r. 4 (4).

² Succession (Property Protection) Act, 1841, *post*, pp. 396, 397.

³ See now Act IV of 1912, s. 71.

⁴ Act VIII of 1890.

⁵ Added by Bom. Act V of 1914, s. 2.

⁶ Bom. Act I of 1905.

⁷ Act X of 1876.

- (a) that such suit shall be tried by the District Judge himself, and shall not be transferred for trial to an Assistant Judge; and
- (b) that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in such Court;

and the Court shall give effect to every such requirement.

The privilege conferred on the Local Government by the clause (b) of this section shall, *mutatis mutandis*, apply to any appeal or special appeal¹ against any decree in any such suit as is described in this section."

"Section 33. Whenever the High Court is of opinion that there are good grounds for making a formal inquiry into the truth of any imputation of misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an inquiry, and on the receipt of his or their report may order that the Subordinate Judge be removed or suspended from office, or reduced to a lower class. Commission of inquiry into alleged misconduct.

"The provisions of Act XXXVII of 1850 (for regulating inquiries into the behaviour of public servants) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

"Section 34. The High Court may suspend any Subordinate Judge from office pending the result of an inquiry into his behaviour under this section. Suspension of Subordinate Judges by High Court; by District Judge.

"Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But, whenever the District Judge suspends any such Subordinate Judge, he shall forthwith report the case for the orders of the High Court.

"Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend, or remove from office, any Subordinate Judge at their discretion. By Government.

"Section 35. In the event of the death of the District Judge or of his being prevented from performing his duties by illness or other casualty, or of his absence from his district on leave, the first in rank of the Assistant Judges in the district, or in the absence from the district of an Assistant Judge the first in rank of the Subordinate Judges, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and while so in charge shall perform the duties of a District Judge with respect to the filing of suits and appeals, receiving pleadings, execution of processes, Temporary vacancy of office of District Judge.

¹ Now called "Second Appeal."

return of writs and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

Delegation of
powers of
District Judge.

"Section 86. Any District Judge leaving the sadr station and proceeding on duty to any place within his district may delegate to an Assistant Judge, or in the absence of an Assistant Judge to a Subordinate Judge at the sadr station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the sadr station.

"Section 87. In the event of the death, suspension or temporary absence of any Subordinate Judge, the District Judge may empower the Judge of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct."

Law to be
observed.

The law to be observed in the Bombay Civil Courts is, according to Bombay Regulation IV of 1827, sec. 26, "Acts of Parliament and Regulations of Government applicable to the case; ¹ in the absence of such Acts and Regulations, the usage of the country in which the suit arose; ² if none such appears, the law of the defendant; ³ and in the absence of specific law and usage, justice, equity, and good conscience alone."

Pleaders.

As to the admission and punishment of pleaders in the Courts of the Bombay Presidency, see Bombay Act XVII of 1920.

The Court of the Agent for the trial of Suits against Dekkhan Sirdars.

Persons ex-
cluded from
jurisdiction
of Courts.

By Bombay Regulation XXIX of 1827, which refers to the Bombay territories in the Dekkhan and Khandesh, consisting of the zillāhs of Puna and Ahmednagar, as described in Appendix A to that Regulation, suits against certain specified persons of rank are excluded from the jurisdiction of the Civil Courts.⁴

The list of such persons, prepared by Government, comprises three classes of persons of rank.⁵

¹ To this would be added the enactments of the local Legislature.

C. W. N., 858; 20 Bom. L. R., 528.

² Cf. *ante*, pp. 82, 83, 60, 61.

³ See *Abdul Hussein Khan v. Sona Dero (Bibi)* (1917), 45 I. A., 10; 22

⁴ S. 8.

⁵ S. 4 (2).

An Agent of Government is specially appointed for the purpose of receiving and trying and deciding all complaints of a Civil nature¹ which would, under the ordinary rules, be cognizable by either of the Judges of Puna and Ahmednagar against any of such persons.² Agent for trial of suits.

Suits against the persons belonging to the first of the classes comprised in the Agent's list, being individuals of the very first distinction and influence under the Peshwa's Government on account of their birth, their political importance, or the religious estimation in which they were held, shall be conducted and decided by the Agent. Suits against first class persons.

No decree against any such defendant can be enforced until the suit and all proceedings thereon shall have been referred to the Governor-General in Council (to whom also the plaintiff may appeal), who, as a special superior Court for the adjustment of such suits, will pass such order thereon as he may deem just and equitable, an appeal to the King in Council being open to either party.³ Execution of decrees and appeals

Suits against the persons belonging to the second of the classes comprised in the Agent's list, being individuals not equal in consideration to those above adverted to, but of high rank and importance under the Peshwa's Government, shall be conducted and tried by the Agent. Suits against second class persons.

An appeal against the Agent's decrees to the superior Court of the Governor in Council is open to either party.

Suits against persons belonging to the third of the classes in the Agent's list, being individuals inferior in rank to those of the first and second classes, but still equitably entitled, on account of the privileges hitherto enjoyed by them, to a special degree of consideration, shall be conducted and tried by the Agent. Suits against third class persons.

An appeal to the High Court is open to either party, and there is a further appeal to the King in Council.⁴

By Act XIX of 1885 the Governor in Council of Bombay may appoint the Assistant Judge of the District Court of Puna to be Assistant to the Agent for Sirdars in the Dekkhan.⁵ Assistant Agent.

The Agent for Sirdars may refer to his Assistant original

¹ See *post*, chap. xxvii.

² S. 4.

³ S. 5. For a recent instance of an appeal to the King in Council, see *Sultan Sani (Shekh) v. Ajmodin*

(*Shekh*) (1892), 20 I. A., 50; 17 Bom. 431.

⁴ S. 5. As to the conduct of such suits, see *ibid.*

⁵ S. 1.

suits against Sirdars for amounts not exceeding five thousand rupees.¹

An appeal lies to the Agent from every decree of the Assistant, and every decision of the Agent on such appeal is open to a special appeal to the Governor in Council, or to the High Court, according as the rank of the Sardar may subject him to the jurisdiction of either authority.

Dharwar.

Creation of
Political
Agent.

Bombay Regulation VII of 1830 contains provisions for the Dharwar district in the Southern Mahratta country similar to those contained in Bombay Regulation XXIX of 1827. It adds: "Section 5. There shall be a Political Agent in the Southern Mahratta country, on the part of the Government, for the trial of suits against persons of rank; and, in modification of the rules contained in section 3 and the following sections of Regulation XXIX of 1827, it is enacted that suits against such persons, of whom a list shall be furnished by Government to the Agent, shall be tried by him in the same manner and under the same rules as are enacted for the Agent of Sirdars' claims for the Dekkhan."²

Suits con-
nected with
land, rent and
produce.

By Bombay Regulation I of 1831, section 1, suits connected with land, its rent and produce, wherein persons of rank of the privileged classes established by Bombay Regulation XXIX of 1827³ are concerned as defendants⁴ are cognizable only by the Agent of Government acting under the powers vested in him by section 4 of the last-named Regulation and under the same rules as are prescribed for his guidance in other cases.

Southern
Mahratta
country.

By section 1 of Bombay Regulation XVI of 1831 suits of the nature specified in clause first, section 1, Regulation I of 1831,⁵ are also cognizable before the Political Agent in the Southern Mahratta country as Agent of Government, and shall be tried by him in the same manner, and under the same rules, as are prescribed for his guidance in section 5 of Regulation VII of 1830.⁶

Extension of
regulations.

The above Regulations were extended to the Satara District and to certain villages in the Sholapur and Southern Mahratta Country by Bombay Act III of 1863.

In a case to which section 4 of the Pensions Act, 1871⁷ (*post*, pp. 311, 312), applies a certificate is necessary.⁸

S. 1.

Ante, pp. 150, 151.

Ibid.

Bom. Reg. XVI of 1831, s. 2.

Ante, p. 151.

* Above.

⁷ Act XXIII of 1871.

⁸ *Daji Nilkanth Nagarkar v. Ganpatrao Nilkanth Nagarkar* (1891), 17 Bom., 224.

Jagirdars, Saranjamidars, and Inamdars.

By Bombay Regulation XIII of 1830,¹ the Governor of Bombay in Council may grant sanads to jagirdars, saranjamidars, and inamdars,² whose names and possessions are enumerated in a list furnished by Government, conferring on them authority to try and determine all original suits of whatever amount that may be either filed in their Courts or may be referred to them by the Agent³ or Judge.

Power of
jagirdars, etc.,
to try suits.

Such sanads may be granted to Agents of foreign Sovereigns having lands and possessions in the British territory of the Bombay Presidency,⁴ and to guardians and such other individuals as the Governor of Bombay in Council may consider it expedient to invest with such powers. In all cases the authority is revocable.⁵

Every jagirdar and other authority invested with these powers is, for the purposes of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct.⁶

All persons residing within the jurisdiction of a jagirdar must bring their civil disputes for adjudication before him, unless where the parties mutually agree to the contrary; or where one or the other is an European or American, or where, one being the relation or dependant of the jagirdar, the other objects on that ground. Suits thus excepted shall be sent up to the Agent of Government⁷ or Judge, who will dispose of them, either by trying them or by referring them for trial.⁸

Disputes to be
brought before
jagirdar.

Decisions passed by the jagirdars enumerated in the list furnished by Government are, in conformity with their right and authority by tenure, final.⁹

Decision of
jagirdars final.

The decisions of all other jagirdars are open to appeal according to the rules regarding appeal if in the first and second class of Sirdars of the list provided for by clause second, section 3, Regulation XXIX of 1827,¹⁰ to the Agent for the

Appeals.

¹ Bom. Reg. XIII of 1830, s. 1. This Regulation is in force throughout the Presidency of Bombay, except as regards the Scheduled Districts: Act XVII of 1879, s. 2A, inserted by Act XXII of 1882, s. 4.

² Grantees of land, revenuc, etc., from Government.

³ *Ante*, pp. 151, 152.

⁴ *Sukaram v. Sudashew* (1863), 1

Bom. H. C., 96.

⁵ Act XV of 1840.

⁶ Act XVII of 1879, s. 2A, inserted by Act XXII of 1882, s. 4.

⁷ In the Dekkhan and Khandesh, see Bom. Reg. XXIX of 1827, s. 4.

⁸ Bom. Reg. XIII of 1830, s. 2.

⁹ Bom. Reg. XIII of 1830, s. 3 (1).

¹⁰ *Ante*, p. 150.

adjustment of Sirdars' claims, if of the third class of the list, to the Judge.¹

Decisions by these authorities in these appeals are open to appeal to the High Court, when, if the original judgment is confirmed, the amount adjudged or at issue is one thousand rupees; if modified or reversed, the amount at issue is two hundred rupees.²

Decrees by a jagirdar can only be set aside for matters affecting the justice of the decision.³

Execution of
decrees.

Jagirdars can execute their own decrees, and application for execution of decrees refused by the jagirdar may be received by the Agent or Judge.⁴

Second appeal.

A second appeal is open in all cases to the High Court.⁵

Courts of Mamlatdars.

In the Presidency of Bombay, including Sindh, there are certain Courts called Mamlatdars' Courts, which determine questions as to right to the present possession to land.

The law on the subject is to be found in the Mamlatdar's Courts Act, 1906,⁶ which extends to the whole of the Bombay Presidency except the City of Bombay and Aden.⁷

Mamlatdar.

A Mamlatdar is the head Revenue and Police native officer in a district.⁸ For the purpose of the Act the expression includes any Revenue Officer exercising for the time being the powers of Mamlatdar of a Mukhtyarkar, or of a Mahalkari, and any other person who may be specially authorised by the Governor of Bombay in Council to exercise the powers of Mamlatdar under the Act.⁹

Joint
Mamlatdar.

The Act contains the following provisions :—

By Section 4, the Governor of Bombay in Council may, by notification in the Bombay Government Gazette, appoint in any taluka a Joint Mamlatdar under the Act, who shall be invested with the same powers and jurisdiction as the Mamlatdar, except that he can dispose of such suits only as may be transferred to him by the Mamlatdar.

¹ Bom. Reg. XIII of 1880, s. 3 (2).

² *Ibid.* s. 3 (8).

³ *Ibid.* s. 3 (4).

⁴ *Ibid.* s. 4.

⁵ *Ibid.* s. 5. *Ramchandra Anandrao v. Pandu* (1913), 38 Bom. 340; 16

Bom. L. R., 75.

Bom. Act II of 1906.

⁷ *Ibid.* s. 1 (2).

⁸ Wilson's Glossary, p. 347.

⁹ Bom. Act II of 1906, s. 3.

The Governor in Council may delegate his power to the Commissioner.¹

The Mamlatdar may transfer to his own file any such suit of which the Joint Mamlatdar is, owing to death, sickness, or any other cause, unable to dispose.²

By Section 5, the Mamlatdar's Court has power, within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal, or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner.

Powers of
Mamlatdar's
Court.

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise his power, but shall record in writing his reasons for such refusal.

The exercise by a joint owner of any right which he has over the joint property is not a dispossession or disturbance of possession within the meaning of this provision.³

The Mamlatdar has also power to issue an injunction to restrain a disturbance or obstruction of possession.⁴

"Section 6. The Collector may after due notice to the parties, by order in writing, transfer any suit from any Mamlatdar's Court in his district to any other Mamlatdar's Court in his district."

Transfer of
suits.

¹ S. 4 (3).

² S. 4 (2).

³ *Jina Jijibhai Baria v. Mathur Jibhai Baria* (1921), 46 Bom., 289; 23 Bom. L. R., 1016.

⁴ *E.g.* an order directing an accused to keep open a right of way to a privy: *Reg. v. Krishnashet* (1868), 5 Bom. H. C. Cr., 46.

Possession
without pre-
judice to
rights.

“Section 22. The party to whom the Mamlatdar gives possession, or restores a use, or in whose favour an injunction is granted, shall continue in possession or use until ousted by a decree or order of a competent Civil Court :

“ Provided, firstly, that the party against whom the Mamlatdar's decision is passed may recover by a suit in a competent Civil Court mesne profits for the time he has been kept out of possession or enjoyment :

“ Provided, secondly, that the Mamlatdar's decision as to possession or enjoyment is not conclusive in another suit.

Bar of appeal.
Revision.

“Section 23. There is no appeal from the Mamlatdar's decision, but the Collector¹ may call for and examine the record of any suit in the Mamlatdar's Court, and if he considers that any proceeding, finding, or order in such suit is illegal or improper,² may, after due notice to the parties, pass such order thereon, not inconsistent with the Act, as he thinks fit.”³

A Collector cannot reverse the decision on the evidence or otherwise act as an Appellate Court.⁴

His action under this section is subject to revision by the High Court.⁵

Sindh.

“Section 24. The Court of the Judicial Commissioner of Sindh may exercise over Mamlatdars' Courts in the Province of Sindh the powers exercised by the High Court of Bombay over Mamlatdars' Courts in other parts of the Bombay Presidency.”

Bar of certain
suits.

“Section 26. No suit lies under the Mamlatdars Act—

(a) against Government or against any officer of Government in respect of any act done or purporting to be done by any such officer in his official capacity, except when acting as a manager or guardian duly constituted under any law for the time being in force ; or

¹ This does not include a District Deputy Collector : *Sonu Janardan v. Arjun* (1915), 39 Bom., 552, differing from *Keshav v. Jairam* (1911), 36 Bom., 123 ; 13 Bom. L. R., 1031, where it was held that an Assistant Collector in charge of a district had powers of revision.

² I.e. irregular : *Kashiram Mansing v. Rajaram* (1911), 35 Bom., 487 ; 13

Bom. L. R., 879.

³ *Hasan v. Rasul* (1913) 37 Bom., 595 ; 15 Bom. L. R., 680.

⁴ *Purshotam Janardan v. Mahadu Pandu* (1912), 37 Bom., 114 ; 14 Bom. L. R., 947 ; *Kashiram Mansing v. Rajaram* (1911), 35 Bom., 487 ; 13 Bom. L. R., 879.

⁵ *Hasan v. Rasul* (1913), 37 Bom., 595 ; 15 Bom. L. R., 680.

(b) in respect of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party under that Act or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure" (Act V of 1898).

As to the powers of a Mamlatdar or a Mahalkari under the Bombay Hereditary Offices Act (Bombay Act III of 1874), see Bombay Act III of 1915, Sch. I.

Dekkhan Agriculturists.

In certain parts of the Dekkhan special provisions for the relief of agriculturists are to be found in the Dekkhan Agriculturists' Relief Acts of 1879 to 1907.¹

As to the definition of an "agriculturist" for the purpose of the Act, "Agriculturist." see Act XVII of 1879, s. 2, and Act VI of 1895, s. 5, and cases decided under the Dekkhan Agriculturists' Relief Acts.

A man who claims to have the benefit given to an "agriculturist" by the Act must prove that he comes within the definition.²

Although the Acts were passed for the relief of agriculturists they apply to all classes under certain conditions.³

Section 11 of Act XVII of 1879⁴ extends to the whole of British India. With that exception, the following provisions apply to the districts of Poona, Satara, Sholapur, and Ahmednagar, but may from time to time be extended wholly or in part by the Local Government, with the previous sanction of the Governor-General in Council, to any other district or districts in the Presidency of Bombay, or to any part or parts of any other such district or districts.⁵

Act XVII of 1879: "Section 2A.⁶ Every jagirdar and other authority invested with powers under Bombay Regulation XIII of 1830,⁷ and Act XV of 1840,⁸ shall for the purposes of this Act be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct."

¹ Acts XVII of 1879; XXIII of 1881; XXII of 1882; XXIII of 1886; VI of 1895; and Bom. Act II of 1907.

² *Narayan Anandram v. Gowbai* (1912), 37 Bom., 415; *Maruti Babaji v. Martand Narayan* (1922), 47 Bom., 44.

³ *Ganesh Krishnaji v. Krishnaji* (1889), 14 Bom., 387; *Tulsidas Dhunjee*

v. Virbussapa (1880), 4 Bom., 624, at p. 628.

⁴ *Post*, pp. 159, 160.

⁵ Act XVII of 1879, s. 1, as amended by Act VI of 1895, s. 4.

⁶ Inserted by Act XXII of 1882, s. 4.

⁷ *Ante*, p. 153.

⁸ *Ibid.*

Territorial limits.

Jagirdars, etc., deemed to be Subordinate Judges.

Hearing of
certain suits
by Subordinate
Judges.

The provisions for the hearing of certain suits by Subordinate Judges apply to—

- (a) suits for an account, whatever be the amount or value of the subject-matter thereof¹ instituted by an agriculturist² in the Court of a Subordinate Judge under the provisions of the Relief Act, and
- (b) suits of the description next hereinafter mentioned—
 - (1) When such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or
 - (2) When such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or
 - (3) When such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

The description of suits referred to in clause (b) are the following namely:—

- (w) Suits for the recovery of money lent or advanced to, or paid for, the defendant, or as the price of goods sold, or on an account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money not hereinbefore provided for;³
- (x) Suits for the recovery of money due on contracts other than the above and suits for rent or for movable property, or for the value of such property, or for damages;⁴ and
- (y) Suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure and sale⁵ when the defendant or any one of the defendants is an agriculturist; and

¹ Act XXII of 1882, s. 5.

² *Ante*, p. 157.

³ *Ganesh Krishnaji v. Krishnaji* (1889), 14 Bom., 387.

⁴ *Shidu v. Ganesh Narayan* (1891), 16 Bom., 128; *Kashiram Mulchand v.*

Hiranand Suratrani (1890), 15 Bom., 30. (w) and (x) apply even when neither party is an agriculturist: *ante*, p. 157.

⁵ Act XXIII of 1886, s. 5.

- (z) Suits for the redemption of mortgaged property when the plaintiff or, where there are several plaintiffs, any one of the plaintiffs is an agriculturist.¹

This provision does not apply to a suit based on a dispossession of an existing possession² or to a suit for land revenue.³

Act XVII of 1879, "Section 4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section 3, clause (b), and instituted in such local area shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class."⁴

Certain suits to be instituted in Courts of first class Subordinate Judges.

In the above districts no Subordinate Judge can be invested with the jurisdiction of a Judge of Small Causes.⁵

Subordinate Judge not to be Small Cause Court Judge.

The Local Government may from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 16 of Act IX of 1887,⁶ shall be heard and determined by him and not otherwise, and may by a like notification cancel such notification.⁷

Jurisdiction of Subordinate Judge and Small Cause Court.

No appeal lies from any decree or order passed under the above provisions.⁸

No appeal.

Act XVII of 1879, "Section 11. Every suit of the description mentioned in section 3, clause (w),⁹ may if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides and not elsewhere.

Agriculturists to be sued where they reside.

¹ Act XVII of 1879, s. 3, as amended by Act XXIII of 1881, *Annaji Waghaji v. Bapuchand Jethiram* (1888) 7 Bom., 520. As to the power of the Court to deal with the real nature of the transaction, see s. 10A added to Act XVII of 1879 by Bom. Act II of 1907, s. 2; *Holleppa Kallappa v. Irappa Giri Mallappa* (1922), 46 Bom., 843.

² *Krishnaji v. Hari* (1904) 28 Bom., 635; 6 Bom. L. R., 588; *Sakharam v. Shripati* (1891), 16 Bom., 183.

³ *Gulam Jilane (Sheikh) v. Kashi-nath Bapuji* (1900), 25 Bom., 244.

⁴ Act XVII of 1879, s. 4. It may be transferred by him to a Subordinate Judge of the second class who has been deputed to assist him: *Munaji v. Narayanrao* (1894), 19 Bom., 46.

⁵ Act XVII of 1879, s. 5.

⁶ *Post*, p. 272.

⁷ Act XVII of 1879, s. 6.

⁸ *Ibid.* s. 10. *Sitararam Morappa v. Khandoba (Shri)* (1914), 39 Bom., 165; 16 Bom. L. R., 756.

⁹ *Ante*, p. 158. See *Tulsidas Dhunji v. Virbussapa* (1880), 4 Bom., 624.

"Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere." ¹

As to the special procedure in the above suits, see Act XVII of 1879, ss. 11-15c.²

As to suits for account brought by agriculturist debtors, see Act XVII of 1879, ss. 15d²-18.

Arrest and imprisonment.

No agriculturist can be arrested or imprisoned in execution of a decree for money.³

Immovable property.

Immovable property⁴ of an agriculturist is exempted from attachment and sale unless specifically pledged, but the Court can direct the Collector to take possession thereof for any period not exceeding seven years.⁵

As to setting aside a sale, see section 22A, inserted in the principal Act by Bombay Act II of 1907, s. 3.

There are certain special provisions with regard to the jurisdiction and powers of a Subordinate Judge in the case of the insolvency of agriculturists in chapter iv of Act XVII of 1879.

No appeals from orders in insolvency.

There is no appeal from an order passed in the insolvency provisions.⁶

Village Munsifs.

Act XVII of 1879, "Section 34. The Local Government may, from time to time, appoint any patel⁷ of a village or any other person possessing local influence in a village to be a Village-Munsif for such village or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment."

Suits triable by them.

Every Village-Munsif shall take cognizance of suits of the description mentioned in section 3, clause (w),⁸ when the

¹ As to the effect of the extension of this section to the whole of British India (*ante*, p. 157), see *Purshotam Lalbhai v. Bhavanji Partab* (1880), 4 Bom., 360.

² Added by Act XXII of 1882, s. 6.

³ Acts XVII of 1879, s. 21, and XXII of 1882, s. 8. As to cases to which Co-operative Credit Societies are parties, see Bom. Act I of 1912, s. 1.

⁴ This does not include standing crops: Act VI of 1895, s. 10.

⁵ Act XVII of 1879, s. 22, as amended by Act XXIII of 1886, s. 7.

⁶ Act XVII of 1879, s. 33. That

section excepted the case of punishment of a dishonest applicant under s. 359 of the then Civil Procedure Code (Act XIV of 1882). That section was repealed by the Provincial Insolvency Act (III of 1907), s. 56, Sch., but the latter Act does not affect Act XVII of 1879, chap. iv: see s. 82 of Act V of 1920. As s. 359 is not represented by any section in the present Civil Procedure Code, it is difficult to see how there can now be any order under that section.

⁷ Headman of a village.

⁸ *Ante*, p. 158.

subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village-Munsif is appointed. A suit cognizable by a Village-Munsif shall not be heard by any other Court, provided that the District Judge may, from time to time, transfer any suit instituted before a Village-Munsif to his own Court or any other Civil Court in the district for trial :

Provided also that no Village-Munsif can try any suit to or in which he is a party or personally interested, or can adjudicate upon any proceeding connected with, or arising out of, such suit.¹

The District Judge may set aside a decree or order of a Village-Munsif on the ground of corruption, gross partiality or misconduct of the Village-Munsif or on the ground that he has exercised a jurisdiction vested in him by law, and may pass such other decree or order as he thinks fit.²

Except as provided by the Act, and in section 115 of the Code of Civil Procedure,³ every decree and order of a Village-Munsif is final.⁴

The same Act makes the following provisions for the conciliation of disputes to which an agriculturist is a party.

The Local Government may, from time to time, appoint any person other than an officer of police,⁵ to be a Conciliator, and may cancel any such appointment.

The Conciliator shall be appointed for a term not exceeding three years but may be reappointed.⁶

A Conciliator can exercise his functions in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.⁷

When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, any of the parties may apply to the Conciliator to effect an amicable settlement between them.⁸

¹ Act XVII of 1879, s. 35.

² *Ibid.* s. 36, as amended by Act VI of 1895, s. 11.

³ Act V of 1908.

⁴ Act XVII of 1879, s. 36.

⁵ This does not include a police

patel appointed under Bom. Act VIII of 1867 : Act XXIII of 1881, s. 7.

⁶ Act XVII of 1879, s. 38.

⁷ *Ibid.*

⁸ Act XVII of 1879, s. 39.

As to the procedure before the Conciliator, see Acts XVII of 1879, ss. 40-48; XXIII of 1886, s. 8.

Agreement to be sent to Court of Subordinate Judge.

When an agreement finally disposing of the matter¹ has been arrived at and is reduced to writing, the Conciliator must forward it to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides.²

As to the further procedure, see Act XVII of 1879, ss. 45, 46.

If the conciliation fail the applicant is to be given a certificate,³ without which a suit cannot be entertained by a Civil Court.⁴

Inspection by District Judge.

The District Judge shall inspect, supervise and control the proceedings of all Subordinate Judges under the above provisions and the proceedings of all Village-Munsifs and Conciliators.⁵

Transfer of cases.

The District Judge may—

- (a) transfer any application pending before a Conciliator to the file of any other Conciliator;
- (b) transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under the Act;⁶ or⁷ transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under the above provisions, and may dispose of the same as if he were a Subordinate Judge; or
- (c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of the Act.

Bench.

If the members of any such Bench differ in opinion, the opinion of the District Judge prevails.⁸

Appointment of Assistant or Subordinate Judge to aid District Judge.

“Section 52.—(1) The Local Government may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under the above provisions, and of all Village-

¹ *Vasudev Pandit v. Narayan Joshi* (1884), 9 Bom., 15.

² Act XVII of 1879, s. 44.

³ *Ibid.* s. 46.

⁴ *Ibid.* s. 47. The expression Civil Court does not include a Mamlatdar's Court (*ante*, pp. 154-157): Act XXIII

of 1881, s. 9.

⁵ Act XVII of 1879, s. 50.

⁶ *Ante*, p. 158.

⁷ Act VI of 1895, s. 13.

⁸ S. 51, as altered by Act XXIII of 1881, s. 11.

Munsifs and Conciliators in any district or part of a district to which the Act applies :

“ Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be appointed for two or more such districts or parts of districts or districts and parts of districts.

“(2) The District Judge may, by order, confer upon any Assistant or Subordinate Judge so appointed, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under the above power of transfer.”¹

The District Judge may, for the purpose of satisfying Revision. himself as to the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under the above provisions, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit ;

And any Assistant or Subordinate Judge so appointed to aid the District Judge may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he sees cause therefor, may refer the same with his remarks thereon to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.²

A Subordinate Judge cannot pass an order in revision.³

The Local Government⁴ may appoint an officer, as Special Special Judge. Judge, to discharge in the place of the District Judge all the functions of the District Judge under the Act in respect of the proceedings of all Subordinate Judges, Village-Munsifs, and Conciliators, and may cancel any such appointment.

Such Special Judge shall not, without the previous sanction of the Local Government,⁴ discharge any public function except those which he is empowered by the Act to discharge.

¹ Substituted for Act XVII of 1879, s. 52 by Act VI of 1895, s. 14.

² Act XVII of 1879, s. 53, as amended by Act XXII of 1882, s. 14.

³ *Sitaram Morappa v. Khandoba (Shri)* (1914), 39 Bom., 165 : 16 Bom. L. R., 756.

⁴ Act XXXVIII of 1920, Sch. I.

If any conflict of authority arises between the Special Judge and the District Judge, the High Court of Bombay shall pass such order thereon consistent with the Act as it thinks fit.

No appeal.

No appeal lies from any decree or order passed by the District Judge in superintendence or revision, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under the Act, or by a Bench, or in any suit or proceeding under the Act.¹

But the District Judge or Special Judge, or an Assistant or Subordinate Judge or Bench, may under section 113 of the Code of Civil Procedure² state a case and refer it to the High Court of Bombay : Provided that no reference be so made by any Assistant or Subordinate or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge or Special Judge, as the case may be.³

¹ Act XVII of 1879, s. 54, as amended by Act XXXVIII of 1920, Sch. I.

² Act V of 1908.

³ Act XXII of 1882, s. 15.

CHAPTER XV.

BRITISH BALUCHISTAN.

THE Courts of Civil Justice in British Baluchistan were constituted by the British Baluchistan Civil Justice Regulation, 1896,¹ which contains the following provisions:—

“Section 3. There are five grades of Civil Courts in ^{Classes of Civil Courts.} British Baluchistan, namely:—

(1) the Court of the Judicial Commissioner ;

As to an Additional Judicial Commissioner, see *post*, pp. 169, 170.

(2) the Court of the Deputy Commissioner ;

(3) the Court of the Assistant Commissioner and extra Assistant Commissioner ;

(4) the Court of the Tahsildar and Munsif ; and

(5) the Court of the Naib-Tahsildar.

“Section 4.—(1) The presiding officers of the Courts of ^{Appointment of presiding officers.} the first and second grades and of the first-mentioned class of the ² third grade shall be appointed and may be removed by the Governor-General in Council.

“(2) The presiding officers of the Courts of the second mentioned class of the third grade and ³ fourth and fifth grades shall be appointed and may be removed by the Chief Commissioner subject to the control of the Governor-General in Council.

“(3) Any appointment under this section may be made either by name or by virtue of office.

“Section 5.—(1) The Chief Commissioner⁴ may fix and ^{Fixing number of Courts.} vary the number of Courts of the second, third, fourth and fifth grades.

“(2) The Chief Commissioner,⁴ by notification in the ^{Local limits of jurisdiction.} Gazette of India, may fix and vary the local limits of the jurisdiction of the Courts aforesaid.

¹ Reg. IX of 1896.

² Reg. II of 1920, s. 2 (1).

³ *Ibid.* s. 2 (2).

⁴ Reg. II of 1920, s. 3.

Original
jurisdiction of
Courts.

“Section 6. Except as otherwise provided by any other enactment for the time being in force—

- (a) the Court of the Naib-Tahsildar shall have jurisdiction to try suits of value not exceeding fifty rupees and of the nature cognizable by a Court of Small Causes established under the Provincial Small Cause Courts Act, 1887 ;¹
- (b) the Courts of the Tahsildar and Munsif shall have jurisdiction to try original suits of such value, not exceeding one thousand rupees, as the Chief Commissioner may in the case of each Tahsildar or Munsif direct, or if no such direction has been made then original suits of value not exceeding three hundred rupees ;
- (c) the Courts of the Assistant Commissioner and Extra Assistant Commissioner have jurisdiction to try original suits of value not exceeding ten thousand rupees ; and
- (d) the Court of the Deputy Commissioner, and the Court of any Assistant Commissioner or Extra Assistant Commissioner whom the Chief Commissioner may, by notification in the Gazette of India, specify in this behalf shall have jurisdiction to try original suits without limit as regards the value.

“² Provided that the Chief Commissioner may by notification in the Gazette of India direct—

- (1) that the Court of any specified Assistant Commissioner or Extra Assistant Commissioner shall under this section have jurisdiction limited to that exercised by the Court of a Tahsildar or Munsif ; or
- (2) that the Court of any specified Tahsildar or Munsif shall have jurisdiction limited to that exercised by the Court of a Naib-Tahsildar.

Effect of order
under above
proviso.

“Section 6A.³ Every Assistant Commissioner or Extra Assistant Commissioner in respect of whose Court an order under the proviso to section 6 is in force shall, for all the purposes of this Regulation be deemed to be a Tahsildar ; and every Tahsildar or Munsif in respect of whom such an order is in force shall for the like purposes be deemed to be a Naib-Tahsildar.

¹ Act IX of 1887, *post*, p. 272.

² Added by Reg. II of 1920, s. 4.

³ Inserted by Reg. II of 1920, s. 5.

"Section 7.—(1) Subject to the provisions of this section High Court. and to any other enactment for the time being in force, the Court of the Judicial Commissioner shall for the purpose of all enactments relating to civil jurisdiction, be deemed to be the High Court for British Baluchistan.

"(2) The Court of the Deputy Commissioner shall, for the District Court. same purposes, be deemed to be the principal Civil Court of original jurisdiction and the District Court for the local areas within its jurisdiction.

"(3) For the purposes of the Indian Divorce Act¹ the High Court of Judicature at Lahore² and the Deputy Commissioner shall be deemed to be the High Court and the District Judge respectively.

"Section 8.—(1) The general superintendence and control Control over Civil Courts. over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

"(2) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the Deputy Commissioner shall control all other Civil Courts in the local area within his jurisdiction."

"Section 67.—(1) A decree or order made in an original Appeals. suit of value not exceeding fifty rupees by a Tahsildar or Munsif, or in an original suit of value not exceeding one hundred rupees by an Assistant Commissioner or Extra Assistant Commissioner, shall, subject to revision, be final.

"(2) From every other decree of a Tahsildar, Munsif, Assistant Commissioner or Extra Assistant Commissioner in an original suit, and from every decree or order of a Naib-Tahsildar in such a suit, an appeal shall lie to the Court of the Deputy Commissioner.

"Section 68.—(1) A decree or order made in an original Appeal from Court of Deputy Commissioner. suit of value not exceeding five hundred rupees by a Deputy Commissioner shall, subject to the provisions of this Regulation with respect to revision, be final.

"(2) From every other decree or order of a Deputy Commissioner in an original suit an appeal shall lie to the Court of the Judicial Commissioner.

"Section 69.—(1) Save as provided by this section and Appeals from appellate decrees and orders. subject to the provisions of this Regulation with respect

¹ Act IV of 1869, *post*, pp. 449-453.

² Reg. II of 1919, s. 2.

to revision, an appellate decree or order of a Deputy Commissioner shall be final.

“(2) An appeal from an appellate decree or order of a Deputy Commissioner in a suit of value exceeding one thousand rupees shall lie to the Court of the Judicial Commissioner.

Revision.

“Section 70. The Judicial Commissioner or, subject to any general or special directions of the Judicial Commissioner, the Deputy Commissioner may, of his own motion or other cause, call for the record of any case decided by a Court under his control in which an appeal does not lie, or in which, for cause shown to his satisfaction, an appeal has not been preferred within the time limited therefor, and may pass such order in the case as he thinks fit.

Distribution of
business by
Deputy
Commissioner.

“Section 71. Notwithstanding anything contained in the Code of Civil Procedure,¹ or the Provincial Small Cause Courts Act, 1887,² a Deputy Commissioner may, by order, direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among those Courts in such manner as he thinks fit.

“Provided that, except so far as it may affect the exclusive jurisdiction of a Court of Small Causes or Court invested with the jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

Transfer.

“Section 72. The Judicial Commissioner or Deputy Commissioner may withdraw any suit or other proceeding pending in any Court under his control and try it himself or refer it for disposal to any other Court under his control and competent to try it.”

Review.

As to power to review decisions, see section 78 of the Regulation.

Conferment of
powers on
Deputy
Commissioner.

“Section 93.—(1) Subject to other provisions of this Regulation, the Chief Commissioner may, by order in writing, invest any Assistant Commissioner or Extra Assistant Commissioner with all or any of the powers of a Deputy Commissioner under this Regulation, and declare that the powers with which he is so invested are to be exercised within any specified local area and with respect to any particular class or particular classes of cases or with respect to cases generally.

¹ Act V of 1908.

² Act IX of 1887.

“(2) The Court of an Assistant Commissioner or Extra Assistant Commissioner so invested shall, for all purposes connected with the exercise of the said powers, be deemed to be the Court of a Deputy Commissioner.

“(3) The Judicial Commissioner may, by order in writing, direct how business is to be distributed between the Deputy Commissioner and any Assistant Commissioner or Extra Assistant Commissioner invested as aforesaid.

“Section 94.—(1) The Chief Commissioner may confer, within such limits as he may prescribe in this behalf, upon any Tahsildar, Munsif, Assistant Commissioner, or Extra Assistant Commissioner the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887,¹ for the trial of suits cognizable by such Courts up to such value not exceeding one hundred rupees in the case of a Tahsildar or Munsif, or five hundred rupees in the case of an Assistant Commissioner or Extra Assistant Commissioner, as he thinks fit, and may withdraw any jurisdiction so conferred. Power to confer Small Cause Court jurisdiction.

“(2) The Judicial Commissioner may make rules for regulating the distribution of business between any Tahsildar or Munsif and any Assistant Commissioner or Extra Assistant Commissioner upon whom jurisdiction may be conferred within the same local limits under sub-section (1).”

As to special rules of procedure, see chapter iii and section 90 of the above Regulation.

As to the law administered in British Baluchistan, see British Baluchistan Laws Regulation, 1918.²

The British Baluchistan Courts Regulation, 1918,³ contains the following :—

“Section 2. The Chief Commissioner with the previous sanction of the Governor-General in Council may, by notification in the Official Gazette, appoint such person as he thinks fit to be an Additional Judicial Commissioner, and to exercise jurisdiction, as such additional Judicial Commissioner, in the Court of the Judicial Commission of British Baluchistan. Appointment of Additional Judicial Commissioner.

“Section 3.—(1) Subject to the other provisions of this Regulation, an Additional Judicial Commissioner shall exercise the same jurisdiction as the Judicial Commissioner may exercise Jurisdiction of Additional Judicial Commissioner.

¹ Act IX of 1887.

² Reg. II of 1913.

Reg. I of 1918.

under any enactment for the time being in force, but only in such cases as the Judicial Commissioner may direct.

“(2) The Judicial Commissioner may transfer any case, whether the hearing has or has not been commenced, from the file of an Additional Judicial Commissioner to his own file.

Law applicable
to Additional
Judicial
Commissioner.

“Section 4. Subject to the other provisions of this Regulation, every enactment for the time being applicable to the Judicial Commissioner shall apply to an Additional Judicial Commissioner when exercising any jurisdiction under this Regulation as if he were the Judicial Commissioner.

Appeals in
certain cases.

“Section 5. Notwithstanding anything in any other enactment for the time being in force, where an appeal is preferred from a decree, judgment, or order passed by the Judicial Commissioner or an Additional Judicial Commissioner in any other capacity or in a case in which such authority is a party or personally interested, the appeal shall be heard by an Additional Judicial Commissioner or the Judicial Commissioner, as the case may be.”

CHAPTER XVI.

CIVIL COURTS IN BURMA.

THE Burma Civil Courts Act, 1922,¹ has taken the place of the Lower Burma Courts Act, 1900,² and of the Upper Burma Civil Courts Regulation, 1896.³

This Act was passed in consequence of the establishment of the High Court at Rangoon in 1922.⁴ That Court has superseded the Chief Court, which was constituted for Lower Burma by the Lower Burma Courts Act, 1900,⁵ and also the Court of the Judicial Commissioner of Upper Burma, to which the Upper Burma Civil Courts Regulation, 1896, applied.⁶

The Burma Courts Act, 1922, contains the following provisions :—

“Section 1.—(2) It extends to the whole of Burma, but the Local Government may, by notification, exempt from its operation any tract or district, and so long as any such notification is uncanceled, nothing herein contained shall be deemed to apply to a tract or district specified in such notification.” Extent of Act.

“Section 3.—(1) In addition to the High Court, the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887,⁷ and the Rangoon Small Cause Court Act, 1920,⁸ and the Courts established under any other enactment for the time being in force, there shall be three grades of Civil Courts in Burma, namely:” Grades of Civil Courts.

- (a) the District Court;
- (b) the Sub-divisional Court; and
- (c) the Township Court.

“(2) Every Court mentioned in the list in sub-section (1)

¹ Bur. Act XI of 1922.

² Act VI of 1900.

³ Reg. I of 1896.

⁴ *Ante*, chap. vii.

⁵ Act VI of 1900.

⁶ Reg. I of 1896.

⁷ Act IX of 1887, *post*, chap. xxv.

⁸ Bur. Act VII of 1920.

shall be of a lower grade than the Court mentioned immediately above it, and shall be subordinate to all Courts above it in the said list.

Superintend-
ence and
control.

“Section 4. Subject to the general superintendence and control of the High Court, the District Court shall superintend and control all other Civil Courts in the local area within its jurisdiction.

Civil divisions,
districts, and
townships.

“Section 5.—(1) For the purposes of this Act the Local Government shall divide Burma outside the City of Rangoon into such civil districts and each civil district into such civil sub-divisions, and each civil sub-division into such civil townships, as it may think fit.

“(2) The Local Government may alter the limits or the number of the said civil districts, and the limits or the number of the said civil sub-divisions and townships.

Establishment
of Courts.

“Section 6. The Local Government shall establish—

- (a) a District Court for each civil district;
- (b) a Sub-divisional Court for each civil sub-division; and
- (c) a Township Court for each civil township.

Original
jurisdiction.

“Section 7. Subject to the provisions of the Code of Civil Procedure,¹ the Provincial Small Cause Courts Act, 1887,² and any other enactment for the time being in force—

- (a) the Township Court shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding five hundred rupees; provided that the Local Government may by notification extend the jurisdiction of any Township Court to suits or original proceedings of a value not exceeding two thousand rupees;
- (b) the Sub-divisional Court shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding five thousand rupees; provided that the Local Government may by notification extend the jurisdiction of any Sub-divisional Court to suits or original proceedings without restriction as regards value;
- (c) the District Court shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards the value, and shall be deemed to be the Court of a District Judge as defined by

¹ Act V of 1908.

² Act IX of 1887.

section 3 (clause (15)) of the General Clauses Act, 1897.¹

“Section 8. The Local Government may, by notification in the local official Gazette, invest any District, Sub-divisional, or Township Court with the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887,² up to such value not exceeding five hundred rupees as it may think fit, to be exercised in cases arising within the limits of the Court's jurisdiction or in any specified area within such limits.

Power to invest certain Courts with Small Cause Court powers.

“Section 9.—(1) Subject to the provisions of the Code of Civil Procedure,³ the Provincial Small Cause Courts Act, 1887,⁴ the Rangoon Small Cause Courts Act, 1920,⁵ and any other enactment for the time being in force, the Courts to which appeals are hereinafter declared to lie, shall respectively have authority to hear appeals from the decrees and orders of the Courts subordinate to them passed in the exercise of their original jurisdiction—

Appellate jurisdiction of the Courts.

(a) an appeal from a decree or order of a Township Court shall lie to the District Court ;

(b) an appeal from a decree or order of a Sub-divisional Court shall lie to the District Court ; provided that the Local Government may, by notification, direct that appeals from original decrees and orders of any specified Sub-divisional Court shall lie to the High Court, in which case an appeal from any such decree or order of any Court so specified shall, so long as such notification continues in force, lie to the High Court ; provided also that an appeal from a decree or order in any suit or original proceeding of a value exceeding five thousand rupees shall lie to the High Court ;

(c) an appeal from a decree or order of a District Court shall lie to the High Court.⁶

“(2) Where an order specified in section 104, sub-section (1), clause (h), of the Code of Civil Procedure, 1908 (an order under any of the provisions of that Code imposing a fine or directing the arrest or detention in the civil prison of any

¹ Act X of 1897.

² Act IX of 1887.

³ Act V of 1908.

⁴ Act IX of 1887.

⁵ Bur. Act VII of 1920.

⁶ See Letters-Patent, cl. 14, *ante*, p. 91.

person except where such arrest or detention is in execution of a decree), is made by a District Court in exercise of the jurisdiction of a Court of Small Causes, an appeal therefrom shall lie to the High Court."

Second appeals
to High Court.

"Section 11.—(1) In addition to the second appeals permissible under section 100 of the Code of Civil Procedure,¹ a second appeal shall lie to the High Court from an appellate decree of a Court subordinate thereto, on any ground which would be a good ground of appeal if the decree had been passed in an original suit, whenever the decree of the Appellate Court varies or reverses otherwise than as to costs the decree of the Court below :

"Provided that no such second appeal shall lie—

- (a) in the case of a small cause, unless the value of the cause exceeds five hundred rupees ; or,
- (b) in the case of an unclassified suit,² unless the value of the suit exceeds five hundred rupees or the suit is of the nature described in sub-section (1) of section 13 of the Burma Laws Act, 1898.³

Power of
District Courts
to transfer
cases.

"Section 12.—(1) In addition to the powers of withdrawal, trial, and transfer conferred by section 24 of the Code of Civil Procedure, 1908,⁴ a District Court may, by order in writing, direct that any case or class of cases which may be instituted in such Court, or in any Court subordinate thereto, shall be disposed of by an Additional Judge of such Court or by any other Court subordinate thereto, or by an Additional Judge of any such subordinate Court, as the case may be : provided that no direction under this section shall empower any Court to exercise jurisdiction beyond the pecuniary limits of its jurisdiction.

"(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes."

As to the fees payable on such transfer, see s. 12 (3).

Delegation of
powers of
District Court.

"Section 13. The District Court may, with the previous sanction of the Local Government, delegate to any Sub-divisional Court in the civil district the powers conferred on the District Court by section 12 of this Act and by section 24 ⁴

¹ *Post*, pp. 342, 343.

² *I.e.* a suit which is neither a land suit nor a small cause, *Bur. Act XI of 1922, s. 2 (a)*.

³ *Act XIII of 1898*. This excludes questions regarding succession, in-

heritance, marriage or caste, or any religious usage or institution in the case of Hindus, Mahomedans, or Buddhists.

⁴ *Act V of 1908, post*, pp. 320, 321.

of the Code of Civil Procedure, 1908,¹ such powers may be exercised by the Sub-divisional Court in any specified portion of the district within the area of the jurisdiction of the District Court.

“Section 14.—(1) No Judge or Additional Judge of a ^{Personal interest of} Court under this Act shall hear or determine any suit, appeal, or other proceeding to which he is a party, or in which he is personally interested. ^{Judges.}

“(2) When any such suit, appeal, or other proceeding comes before any Judge of a subordinate Court, he shall forthwith transmit the record of the case to the Court empowered to transfer cases to which he is subordinate, with a report of the circumstances attending the reference, and such superior Court shall thereupon hear and determine the case or transfer it to some other Court.

“(3) When any suit, appeal, or proceeding comes before an Additional Judge of a subordinate Court, he shall forthwith transmit the record of the case to the Judge of the Court, who shall hear and determine the case.

“Section 15.—(1) The Judges and Additional Judges, if ^{Appointment of Judges.} any, of the District Courts shall be appointed by the Local Government; and the Judges and Additional Judges, if any, of the Sub-divisional and Township Courts shall be appointed by the High Court; provided that the total number of Judges and Additional Judges of the Sub-divisional and Township Courts to be appointed by the High Court shall not exceed the number fixed from time to time by the Local Government.

“(2) Any officer appointed an Additional Judge shall exercise the jurisdiction of the Court to which he is appointed and the powers of the Judge thereof, subject to any general or special orders of the Local Government as to the class or value of suits or appeals which he or officers of his rank or grade may try, hear or determine, and subject also, in respect of the distribution of the business of the Court, to the control of the Judge thereof.

“(3) An officer may be appointed an Additional Judge of one or more Courts, and an officer who is a Judge of one Court may be appointed an Additional Judge in another Court or in other Courts.”

“Section 17. Every Civil Court shall be held at such ^{Place of sitting.} place or places as the Local Government may, by notification,

¹ Act V of 1908.

direct, or, in the absence of any such direction, at any place within the local limits of the jurisdiction of the Court."

Continuance of
jurisdiction of
abolished
Courts.

"Section 22.—(1) Where any Court under the Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case which, if that Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court to which the business of the former Court has been transferred.

"(2) Nothing in sub-section (1) shall be construed to apply to cases for which provision is made by section 37 (Execution of decree) and by rule 2 of Order XLVII (Review) of the Code of Civil Procedure (Act V of 1908), or by any other enactment for the time being in force.

References in
existing enact-
ments to Chief
Court.

"Section 23. In every enactment now in force, and in every appointment, rule, byelaw, notification, or form made or issued thereunder, all references to the Chief Court of Lower Burma or to the Judicial Commissioner, Upper Burma, or to the Court of the Judicial Commissioner, Upper Burma, shall be construed, when necessary, as referring to the High Court."

As to the law to be administered in Burma, see Burma Laws Act, 1898 (Act XIII of 1898), s. 13.

Bar to Jurisdiction of Civil Courts.

The Lower Burma Town and Village Lands Act, 1898,¹ runs as follows :—

Acquisition of
loss of land-
holder's right
in Lower
Burma.

"Section 15.—(1) Whenever a question arises in any proceeding before a Civil Court as to whether any person has acquired a landowner's right in respect of any land, and it appears that a declaration of the fact of such acquisition has been made or recorded by the Revenue Officer not less than five years before the commencement of such proceeding and is still uncanceled, the Court shall decide in accordance with such declaration.

"(2) Whenever any such question arises in any such proceeding and it appears that no such declaration has been so made, or that, if made, it was made less than five years before the commencement of such proceeding, or that it has been cancelled, and whenever any question arises as to whether a

¹ Bur. Act IV of 1898.

landholder's right, having been so acquired, has been subsequently lost, the Court shall refer such question to the Revenue Officer, and shall give judgment in accordance with his decision thereon :

"Provided that, where an appeal from the decision of the Revenue Officer on any question so referred lies to a Revenue Officer of a higher grade, the Court shall on such conditions as to the furnishing of security or otherwise as it thinks fit, defer its judgment so as to allow time for preparing an appeal, and, in the event of a decision being given in appeal different from that given by the Revenue Officer to whom the question was originally referred, shall give judgment in accordance with the decision given in appeal."

Section 41 of the same Act purports to exclude from the jurisdiction of a Civil Court any claim to any right over land as against the Government, but it has been held that that exclusion has no legal effect.¹

Suits against Government for land.

The Burma Fisheries Act, 1905,² contains the following :—

"Section 31.—(1) If in any proceeding before a Civil Court any question arises—

Questions as to fishery.

- (a) as to whether any fishery is a leasable fishery or a reserved fishery; or
- (b) as to the boundaries of any leasable fishery, or as to the boundaries of any such fishery as leased, or subject to any right disposed of, under section 9, sub-section (1), or sub-section (2);³ or
- (c) whether a lessee or licensee of any such leasable fishery or reserved fishery disposed of under section 9, sub-section (1) or sub-section (2) is working the fishery in accordance with the terms of his lease or licence; or
- (d) whether or to what extent any leasable fishery or any reserved fishery is affected by the working of any such canal or channel as is mentioned in section 12,

the Court shall refer such question to the Deputy Commissioner who has charge of such fishery.

"(2) On any question being so referred to him, the Deputy Commissioner shall, without delay, make such inquiry as he

¹ *Secretary of State v. Moment* (1912), 40 I. A., 48; 40 Cal., 391; 17 C. W. N., 169; 15 Bom. L. R., 27.

² Bur. Act III of 1905.
³ Disposal of rights in fisheries by Deputy Commissioner.

may think necessary, and shall certify his decision to such Civil Court.

“(8) The decision of the Deputy Commissioner under subsection (2) shall be conclusive as to the question so referred.”

Appeal.

There is a provision for an appeal to a Revenue Officer of a higher grade similar to that given by section 15 of the Lower Burma Town and Village Lands Act, 1898.¹

Exclusion of jurisdiction of Civil Court in matters within the jurisdiction of revenue officers.

By section 58 of the Upper Burma Land and Revenue Regulation, 1889 (Reg. III of 1889), as amended by the Upper Burma Land and Revenue Regulation, 1901 (Reg. V of 1901, s. 10),—

“(1) Except as otherwise provided by this Regulation, a Civil Court shall not have jurisdiction in any matter which the Local Government or a Revenue Officer is empowered by or under this Regulation to dispose of, or take cognizance of the manner in which the Local Government or any Revenue Officer exercises any powers vested in it or him by or under this Regulation; and in particular—

“(2) A Civil Court shall not exercise jurisdiction over any of the following matters, which shall be cognizable exclusively by Revenue Officers, namely—

- (i) any question as to the limits of any State land;²
- (ii) any claim to the ownership or possession of any State land,³ or to hold such land free of land revenue or at a favourable rate of land revenue or to establish any lien upon, or other interest in such land or the rents, profits or produce thereof;
- (iii) any claim to compel the performance of any duties imposed by or under this Regulation or any other enactment for the time being in force on any Revenue Officer as such;
- (v) the preparation of record of rights or periodical edition of such record;
- (vi) the correction of any entry in a record of rights or periodical edition of such a record or in a register of mutations;

¹ Bur. Act IV of 1898, *ante*, pp. 176, 177.

² For a definition of “State land” see s. 28 of Reg. III of 1889. This provision is apparently *ultra vires*:

cf. Secretary of State v. Moment (1912), 40 I. A., 48; 40 Cal., 391; 17 C. W. N., 169; 15 Bom. L. R., 27.

³ *Ibid.*

- (vii) the amount of land revenue¹ to be paid in respect of any State or other land under this Regulation ;
- (viii) the amount of, or the liability of any person to pay, any other revenue recoverable under this Regulation ;
- (ix) any claim connected with, or arising out of, any right in an irrigation work, or any charge in respect of land irrigated from such a work, or any matter which the Collector is bound to ascertain and record under section 36 of this Regulation ;
- (x) any claim to a right to fish, or connected with, or arising out of, the demarcation or disposal of any fishery ;
- (xi) any claim to hold free of revenue any land, fishery, or natural products of land or water ;
- (xii) any claim connected with, or arising out of, the collection of revenue, or the enforcement of any process for the recovery of an arrear of revenue or any sum recoverable as such an arrear ;
- (xiii) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of revenue or any sum recoverable as such an arrear ;
- (xiv) the amount of, or the liability of any person to pay, any fees, costs, or other charges imposed under this regulation."

SPECIAL COURTS OF CIVIL JUSTICE IN BURMA.

Village Courts.

The Burma Village Act, 1907,² contains the following :—

"Section 5.—(1)² The Deputy Commissioner may declare ^{Determination of village-tract.} that any local area shall be a village-tract, and when necessary may determine the limits of any village-tract.

"(2) The Deputy Commissioner shall appoint a headman ^{Appointment of village headman.} for every village-tract, and in making such appointment shall have regard, so far as circumstances admit, to any established custom which may exist regarding the right of nomination or succession or otherwise, and to claims based thereon."

"(4) Every local area constituting, immediately before the commencement of this Act, a village as defined in the Lower

¹ Reg. V of 1901, s. 10.

² Bur. Act VI of 1907. This Act applies to the whole of Burma : *ibid.*

s. 1 (2). It was declared in force in the Arakan Hills District by Reg. I of 1916.

Burma Village Act, 1889,¹ or in the Upper Burma Village Regulation, 1887,² shall be deemed to have been declared a village-tract for the purposes of this Act.

Civil jurisdiction of headman.

"Section 6.—(1) The Commissioner may, by notification, invest any headman with the powers of a Civil Court for the trial of suits between persons of whom both, or all, as the case may be, reside within the village-tract, and may by general or special notification, specify the classes, and the value not exceeding twenty rupees, of the suits which such headman may try.

"(2) In any suit tried in exercise of such powers the decision of the headman shall, subject to revision by such authority as the Local Government may appoint in this behalf, be final.

"(3) Notwithstanding anything in the Code of Civil Procedure, a person shall not be bound to institute a suit in the Court of a headman."

As to a claim to be headman, see section 26 of the Act.

Arakan Hills.

Grades of Courts.

The following provisions for the administration of Civil Justice in the Hill district of Arakan are to be found in the Arakan Hills Civil Justice Regulation, 1874,³ as amended by the Arakan Hills Civil Justice Amendment Regulations, 1876⁴ and 1917.⁵

"Section 2. The Civil Courts in the said district shall be of three grades, namely:—

- (1) the Courts of the Assistant Commissioners and Extra Assistant Commissioners;
- (2) the Court of the Deputy Commissioner, and
- (3) the Court of the Commissioner.

Powers of Courts.

"And the powers of such Courts, respectively, shall be as follows:—

- (a) An Assistant or Extra Assistant Commissioner may try original cases whatever be the value or the amount of the subject-matter thereof.

The Deputy Commissioner may entertain and try all civil suits originally instituted in his own Court.⁶

¹ Act III of 1889, s. 2 (1).

² Reg. XIV of 1887, s. 2 (1).

³ Reg. VIII of 1874.

⁴ Reg. V of 1876.

⁵ Reg. I of 1917.

⁶ Reg. V of 1876, s. 2.

- (b) The Deputy Commissioner may, except as hereinafter provided,¹ hear appeals from all decrees and orders of the Assistant Commissioner and Extra Assistant Commissioner :

he may also remove into his own Court any original case pending in the Court of one of these officers, and dispose of it himself or transfer any such case from the Court of one of those officers to the Court of another :

- (c) The Commissioner shall be the highest Court of appeal in all civil matters ; he may, except as hereinafter provided,² hear appeals from the decrees and orders of the Deputy Commissioner whether passed in original cases or on appeal :

he may also remove into his own Court any original case or appeal pending in any Subordinate Court, and dispose of the same, or transfer any original case from any one Subordinate Court to any other."

"Section 29A. If on the day fixed for the defendant to appear and answer, all the parties interested agree that the matters in difference between them should be referred to arbitration, the Court may refer the case to one or more paid Chiefs for disposal.³

Reference to arbitration.

"Section 29B. The paid Chiefs after disposal shall report to the Court, which may refer the case back for further consideration, or may embody the result of the arbitration in the form of a decree ; such decree shall be enforceable as if it were a decree of the Court.⁴

Power to refer back or pass decree according to award.

"Section 30. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff, by default for non-appearance."

No appeal from judgments passed *ex parte*.

As to setting aside such judgment, see *ibid*.

"Section 54.⁵ All suits involving any question regarding succession, inheritance, marriage or caste, or any religious usage or institution where the parties are Buddhists, Mahomedans, or Hindus, shall be heard with the aid of

¹ *I.e.* when the appeal has been transferred.

² *I.e.* when the case has been transferred to the High Court at Rangoon, *post*, p. 182.

³ Inserted by Reg. I of 1917, s. 2.

⁴ *Ibid*.

⁵ As amended by Reg. II of 1892, s. 1.

assessors selected by the Court from the class to which the parties belong."

Calling up
appeals.

"Section 76.¹ The High Court of Judicature at Rangoon may call up any appeal pending in the Court of the Commissioner, and proceed to try the case as if it were an appeal instituted in the High Court."

"The High Court shall send to the Court of the Commissioner a copy of its judgment in any case tried under this section, and the said Court shall dispose of the case in conformity with such judgment."

Functions of
High Court.

The functions of the High Court in all civil and miscellaneous matters shall be discharged by the Commissioner.²

Scheduled
District.

The Arakan Hills are a Scheduled District.³

As to the law to be administered, see the Arakan Hills Civil Justice Regulation, 1874,⁴ s. 4; the Arakan Hills District Laws Regulations, 1901,⁵ s. 2, and 1916.⁶

Cocos Island and Preparis Island

Cocos Island
and Preparis
Island.

The law in force in the Little Cocos Island and the Preparis Island is the same as that in the Hanthawaddy District of the Pegu Division of Lower Burma.⁷

The first-named island has ceased to be a Scheduled District.⁸

Pegu and Tenasserim.

Validating
certain pro-
ceedings of
certain officers.

The Pegu and Tenasserim Validation Act, 1895 (Act XI of 1895), s. 1, validates proceedings and acts—

- (a) by the Commissioner of Sessions Judge of the Pegu Division and by the Deputy Commissioner and other Magistrates or officers of the Hanthawaddy District within the precincts of their Courts and offices in the Rangoon Town District, and
- (b) by the Commissioner or Sessions Judge of the Tenasserim Division and by the Deputy Commissioner and other Magistrates or officers of the Amherst District within the precincts of their respective Courts and offices in the Maulmain Town District and the Maulmain Town Sub-division of the Amherst District.

¹ As amended by Bur. Act XI of 1922, Sch. I; Acts XIII of 1898, s. 7, and VI of 1900, s. 47.

² Reg. I of 1916.

³ Act XIV of 1874, s. 1, Sch. I, Pt. XI; Act XV of 1874, s. 2, Sch. VI,

Pt. XI.

⁴ Reg. VIII of 1874.

⁵ Reg. II of 1901.

⁶ Reg. I of 1916.

⁷ Act VIII of 1888, s. 2.

⁸ *Ibid.* s. 4.

Chin Hills.

Regulation V of 1896, and the enactments specified in the Schedule to that Regulation, and no other enactment apply to Chins¹ in the Chin Hills.² Law applicable.

The Local Government, subject to the control of the Governor-General in Council,³ may apply other enactments⁴ under the Burma Laws Act (XIII of 1898), s. 13.

Sections 1, 2, 3 of the Regulation above apply to the whole of the Chin Hills.⁴

The rest of the Regulation extends only to such tracts in the Chin Hills as the Local Government, subject to the control of the Governor-General in Council, may, by notification in the Burma Gazette, direct.⁵

So far as regards persons other than Chins the law in force in the Chin Hills is, subject to certain specified exceptions, the law for the time being in force in Upper Burma exclusive of the town of Mandalay.⁶ For this purpose the Superintendent is deemed to be the Deputy Commissioner or the District Magistrate and Collector, and an Assistant Superintendent, an Assistant Commissioner in charge of a sub-division or an Assistant Collector of the first class as the case may be.⁷ The Local Government exercises the powers of a Commissioner.⁸

The Regulation contains the following:—

“Section 5.—(1) Subject to any general or special orders of the Local Government the Superintendent may appoint and remove any headman, and may define the local limits of his jurisdiction and declare what clan or village, or both, shall be subject to him. Appointment and removal of headmen.

“(2) Where a headman is appointed for a group of villages or clans, the Superintendent may declare the extent to, and the manner in which the headman of the villages or clans composing such group shall be subordinate to the headman of the group.

¹ “Chins” include (a) Lushais, (b) Kukis, (c) Burmans domiciled in the Chin Hills, and (d) any persons who have adopted the customs and language of the Chins and are habitually resident in the Chin Hills: Reg. V of 1896, s. 2 (3).

² Reg. V of 1896, s. 3 (1), (2).

³ Reg. II of 1910, s. 5.

⁴ Reg. V of 1896, s. 2 (3).

⁵ Reg. V of 1896, s. 3 (1), as amended by Reg. II of 1910. For notifications on this subject, see Burma Gazette, 1897 and 1898, Pt. I, pp. 210 and 322.

⁶ Reg. V of 1896, s. 4 (1).

⁷ *Ibid.* s. 4 (2).

⁸ *Ibid.* s. 4 (3).

"Section 6.—(1) Every headman shall within the local limits of his jurisdiction have general control, according to local custom, over the clan, or village, or both declared subject to him."

Civil jurisdiction of headmen.

"Section 8. A headman may try and decide according to local custom any dispute of a civil nature¹ between persons subject to his general control, and may enforce his decision in accordance with such custom."

District.

The Chin Hills constitutes a district for civil purposes, the Superintendent being the District Judge.²

Powers conferred on Assistant Superintendent.

"Section 11. The Local Government may, by notification in the Burma Gazette, invest any Assistant Superintendent with all or any of the powers of a Superintendent, and define the local limits of his jurisdiction.

Civil jurisdiction.

"Section 12. The Superintendent and every Assistant Superintendent exercising jurisdiction within the Chin Hills (1) may try any suit or other proceeding of a civil nature³ between parties, any one of whom is a Chin, according to such procedure as the Local Government may, by notification in the Burma Gazette, prescribe; and (2) in the trial of any such suit or proceeding may exercise all or any of the powers which he might exercise in a suit or proceeding in which none of the parties is a Chin; and (3) in deciding such suit or proceeding, shall have regard to local custom, and to justice, equity and good conscience.

Withdrawal of cases.

"Section 13. The Superintendent may withdraw any civil . . . case pending before a headman or an Assistant Superintendent, and may either try it himself or refer it for trial to an Assistant Superintendent."

Prohibition of appeals.

"Section 37. No appeal shall lie against an order passed by a headman or by any officer acting under this Regulation.

Control and revision.

"Section 38.—(1) All headmen and all officers in the Chin Hills shall be subordinate to the Superintendent, who may revise any order passed by any such headman or officer, including an Assistant Superintendent specially empowered under section 11.

"(2) The Local Government may revise any order passed under the Regulation.

Orders not to be questioned

"Section 40. Except as provided in the Regulation, a

¹ Cf. *post*, pp. 294-302.

² Cf. *post*, p. 293.

³ Reg. V. of 1896, s. 9 (1).

decision passed, act done, or order made under the Regulation by Court of Justice.
cannot be called in question by any Civil or Criminal Court."

Kachin Hills.

The law applicable to the hill-tribes in the Kachin Hill-tracts of Upper Burma is to be found in the Kachin Hill-tribes Regulation, 1895.¹

It extends to such hill-tracts and such hill-tribes as the Local Government, subject to the control of the Governor-General in Council,² may direct.³

Regulation I of 1895, and the enactments specified in the schedules thereto, and enactments subsequently applied by the Local Government, subject to the control of the Governor-General in Council,⁴ are the only enactments which apply to members of a hill-tribe in a hill-tract.⁵ Law applicable.

That Regulation contains the following provisions:—

"Section 4.—(1) Subject to any general or special orders of the Local Government the Deputy Commissioner may appoint and remove a headman⁶ from any tribe, clan, village, or group of villages, and may define the local limits of his jurisdiction and declare what tribe, clan, village, or group of villages, shall be subject to him. Appointment and removal of headman.

"(2) Where a headman is appointed for a group of villages or clans, the Deputy Commissioner may declare the extent to and the manner in which the headman of the villages or clans composing such group shall be subordinate to the headman of the group.

"(3) In making a declaration under this section the Deputy Commissioner shall be guided as far as practicable by local custom."

"Section 7. A headman may try and decide according to local custom any dispute of a civil nature between persons subject to his jurisdiction, and he may enforce his decision in accordance with such custom. Civil jurisdiction of headman.

"Section 10.—(1) The Local Government may, by notification, Powers conferred on

¹ Reg. I of 1895. See Bur. Act. I of 1898, s. 13.

² Reg. II of 1910, s. 3.

³ Reg. I of 1895, s. 1 (3).

⁴ Reg. II of 1910, s. 4.

⁵ Reg. I of 1895, s. 3 (2).

⁶ This means the chief or head of any hill-tribe, or clan or village, or group of clans or villages, and includes a *Duwa* and an *Akyi*: Reg. I of 1895, s. 2 (4).

Assistant
Commissioner.

tion in the Burma Gazette, invest any Assistant Commissioner with all or any of the powers of a Deputy Commissioner.

“(2) In any notification under this section the Local Government may define the local limits of the jurisdiction of any such Assistant Commissioner.

Civil
jurisdiction.

“Section 11.—(1) The Deputy Commissioner and every Assistant Commissioner, exercising jurisdiction within a hill-tract may try any suit or other proceeding of a civil nature between parties any one of whom is a member of a hill-tribe according to such procedure as the Local Government may, by notification in the Burma Gazette, from time to time prescribe; and

“(2) in the trial of any such suit or proceeding may exercise any of the powers which he might exercise in a suit or proceeding in which none of the parties belong to a hill-tribe; and

“(3) in deciding any such suit or proceeding, shall have regard to local custom and to justice, equity, and good conscience.¹

Power to with-
draw cases.

“Section 12. The Deputy Commissioner may withdraw any civil . . . case pending before a headman or an Assistant Commissioner, and may either try it himself or refer it for trial to an Assistant Commissioner.”

Shan States.

Law in the
Shan States.

The Local Government of Burma, subject to the control² of the Governor-General in Council, may, by notification in the Burma Gazette, extend, with such restrictions and modifications as it thinks fit, to all or any of the Shan States, or to any specified local area in the Shan States, any enactment which is in force in any part of Upper Burma at the date of the extension.³

Unless and until it is extended by the above provision, or unless it is expressed by special mention of the Shan States to extend thereto, an enactment shall not be in force in the Shan States or any part thereof.⁴

Where no enactment is applicable, the law to be administered in a Shan State shall be the customary law of the State

¹ Cf. *ante*, p. 61.

² Reg. II of 1910, s. 2.

³ Act XIII of 1898, s. 10 (1).

⁴ *Ibid.* s. 10 (2); Bur. Act I of 1898, s. 13.

in so far as that law is in accordance with justice, equity, and good conscience.¹

As to the provision for the administration of civil justice in the Shan State of Mong Mit and its dependency Mong Lang, see the Mong Mit Administrative Order, 1906.²

The Local Government, subject to the control of the Governor-General in Council, may, by notification in the Burma Gazette, declare what territories constitute the Shan States for the purposes of the Burma Laws Act, 1898.³

Declaration as to what constitutes Shan States.

Subject to any enactment for the time being in force in a Shan State, and to such conditions as may have been, or may be, prescribed by the Local Government, with the approval of the Governor-General in Council, in any instrument recognising a person as the chief of the State, the administration of civil . . . justice is vested in the person for the time being recognised by the Local Government as the Chief of the State.⁴

Administration of Shan States by their own Chiefs and under their own laws.

The Local Government may, by order,—

(a) appoint officers to undertake, or to take part in, the administration of civil . . . justice within the Shan States;

Participation of Government in the administration of Shan States.

(b) with the previous sanction of the Governor-General in Council define the powers and regulate the procedure of officers so appointed and their deputies and subordinates, and of the chiefs and their subordinates;

(c) with the previous sanction of the Governor-General in Council direct by what authority any jurisdiction, power, or duty incident to the operation of any enactment for the time being in force in the Shan States is to be exercised or performed.⁵

¹ Act XIII of 1898, s. 11 (2). As to the modification of the customary law by the Local Government, see *ibid.* 12 (1) (c).

² Burma Code, 1910, Part V, pp. 660

et seq.

³ Reg. II of 1910, s. 2; Act XIII of 1898. See Burma Code, Part V.

⁴ Act XIII of 1898, s. 11 (1).

⁵ *Ibid.* s. 12.

CHAPTER XVII.

CENTRAL PROVINCES.

THE law as to the constitution and jurisdiction of the Courts of Civil Justice in the Central Provinces is to be found in the following sections of the Central Provinces Courts Act, 1917,¹ which extends to the whole of the Central Provinces.²

Jurisdiction
of Court of
Judicial
Commissioner.

“Section 3. The Court of the Judicial Commissioner of the Central Provinces shall be the highest Civil Court of Appeal. . . .

Constitution
of Court of
Judicial
Commissioner.

“Section 4.³—(1) The Court of the Judicial Commissioner shall consist of four or more Judges, who shall be appointed by the Local Government, and of whom one at least shall be an Advocate of the Court or a barrister or pleader of not less than ten years' standing.

“(2)⁴ The Local Government shall appoint one of such Judges to be the Judicial Commissioner, and the others shall be Additional Judicial Commissioners.

“(3) Every person appointed under this section shall hold his office during the pleasure of the Governor-General in Council.

Rank and
precedence
of Judges.

“Section 5.—(1) The Judicial Commissioner shall have rank and precedence before the other Judges of his Court.

“(2) The Additional Judicial Commissioners shall have rank and precedence among themselves according to the seniority of their appointment as such Additional Judicial Commissioners :

“Provided that an Additional Judicial Commissioner permanently appointed shall be deemed to be senior to, and to have rank and precedence before, a Judge who is not permanent.

¹ C. P. Act I of 1917.

1920, Sch. I.

² *Ibid.* s. 1 (2).

⁴ As amended by Act XXXVIII of

³ As amended by Act XXXVIII of 1920, Sch. I.

“(3) In this Act the expression ‘the senior Judge’ shall mean the Judge for the time being entitled to the first place in rank and precedence.

“Section 6.—(1) Except as otherwise provided by this Act or by any other enactment for the time being in force, and subject to any rules made under this Act, the jurisdiction of the Court of the Judicial Commissioner may be exercised by a single Judge of the Court.

Exercise of jurisdiction by Judges of Court of Judicial Commissioner.

“(2) The Court of the Judicial Commissioner may, with the sanction of the Local Government, make rules to provide, in such manner as it thinks fit, for the exercise of any of its powers by a Bench of two or more Judges of the Court.

“Section 7.—(1) The Court of the Judicial Commissioner may make rules declaring what number of Judges, not being less than three, shall constitute a Full Bench of the Court, and may by such rules prescribe the mode of determining which Judges shall sit as a Full Bench when such sitting becomes necessary.

Constitution of Full Bench and other Benches.

“(2) Subject to the provisions of sub-section (1), the Judicial Commissioner may determine which Judge in each case or class of cases shall sit alone and which Judges shall constitute any Bench.

“Section 8. The Judicial Commissioner may transfer any case, whether the hearing has or has not commenced, from the file of any Judge sitting alone to the file of any other Judge of the Court.

Power of Judicial Commissioner to transfer cases.

“Section 9. Any single Judge of the Court of the Judicial Commissioner, and any Bench of Judges thereof not being a Full Bench, may refer for the decision of a Bench of two Judges or of a Full Bench any question of law or custom having the force of law, or of the construction of any document, or of the admissibility of any evidence, arising in any case before the Judge or Bench, and shall dispose of the case in accordance with the decision of the Bench to which the question has been referred.

Power to refer question to Bench or Full Bench.

“Section 10. Except as otherwise provided by any enactment for the time being in force,—

Rule of decision where Judges differ.

- (a) where there is a difference of opinion among the Judges composing any Bench of the Court of the Judicial Commissioner, the decision shall be in accordance with the opinion of the majority of those Judges ;

- (b) if there is no such majority, then,—
- (i) if the Bench is a Full Bench, the decision shall be in accordance with the opinion of the senior Judge of the Bench ;
 - (ii) in other cases, the Bench before which the difference has arisen shall refer it to another Judge of the Court and shall dispose of the case in accordance with the decision of such Judge.”

Classes of Courts.

“Section 14. Besides the Court of the Judicial Commissioner, the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts in the territories to which this Act extends, namely :

- (a) the District Court ;
- (b) the Court of the Subordinate Judge ; and
- (c) the Court of the Munsif.

Civil districts.

“Section 15. For the purposes of this Act, the Local Government shall divide the Province into such civil districts as it may think fit, and may alter the limits or the number of the said civil districts.

Establishment of Courts.

“Section 16. The Local Government shall establish—

- (a) a District Court for each civil district, and
- (b) so many Courts of Subordinate Judges and Munsifs respectively for each civil district as it may think fit.

Original jurisdiction of District Courts and of Courts of Subordinate Judge and Munsif.

“Section 17.—(1) Subject to the provisions of the Code of Civil Procedure, 1908,¹ the Provincial Small Cause Courts Act, 1887,² and any other enactment for the time being in force,—

- (a) the Court of the Munsif shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding one thousand rupees :

Provided that the Local Government may, on the recommendation of the Judicial Commissioner, direct, by notification, with respect to any Munsif named therein that his jurisdiction may extend to suits and original proceedings of such value not exceeding two thousand rupees as may be specified in the notification ;

¹ Act V of 1908.

² Act IX of 1887.

- (b) the Court of the Subordinate Judge shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding ten thousand rupees ;
- (c) the District Court shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards the value, and shall be deemed to be the principal Civil Court of original jurisdiction in the civil district, and shall also have jurisdiction to hear and determine any original proceeding under the Indian Divorce Act, 1869,¹ and shall be deemed the District Court under that Act for the civil district.

“(2) The local limits of the jurisdiction of the Courts specified in sub-section (1), clauses (a) and (b), shall be such as the Local Government may, by notification, define.

“Section 18. The Local Government may, by notification, invest any District Court or any Court of a Subordinate Judge or of a Munsif with the powers of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887,² up to such value not exceeding five hundred rupees in the case of a District Court or of the Court of a Subordinate Judge or two hundred rupees in the case of the Court of a Munsif as it thinks fit, to be exercised in cases arising within the limits of the Court’s jurisdiction or in any specified area within such limits.

“Section 19.—(1) The Judicial Commissioner may, by general or special order, authorise any Subordinate Judge to take cognizance of, or the Judge of a District Court to transfer to a Subordinate Judge under his control, any of the proceedings hereinafter mentioned or any class of those proceedings specified in such order.

“(2) The proceedings referred to in sub-section (1) are the following, namely :—

- (a) Proceedings under the Indian Succession Act, 1865,³ and the Probate and Administration Act, 1881,⁴ which cannot be disposed of by District Delegates.
- (b) Proceedings under the Guardians and Wards Act, 1890.⁵

¹ Act IV of 1869.

² Act IX of 1887.

³ Act X of 1865.

⁴ Act V of 1881.

⁵ Act VIII of 1890.

- (c) References by Collectors under paragraph 5 of the Third Schedule of the Code of Civil Procedure, 1908.¹

“(3) The Judge of the District Court may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

“(4) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge under this section shall be disposed of by him, subject to the law and rules applicable to like proceedings when disposed of by the Judge of the District Court.

Appellate
jurisdiction
of the Courts.

“Section 20. Subject to the provisions of the Code of Civil Procedure, 1908,¹ the Provincial Small Cause Courts Act, 1887,² and any other enactment for the time being in force, the Courts to which appeals are hereinafter declared to lie shall respectively have authority to hear appeals from the decrees and orders of the Courts subordinate to them, passed in the exercise of their original jurisdiction—

(a) an appeal from the decree or order of the Court of a Munsif shall lie to the District Court;

(b) an appeal from the decree or order of the Court of a Subordinate Judge shall lie—

(i) where the value of the suit or original proceeding in such Court does not exceed five thousand rupees, to the District Court; and

(ii) where the value of such suit or original proceeding exceeds five thousand rupees, to the Court of the Judicial Commissioner;

(c) an appeal from the decree or order of a District Court shall lie to the Court of the Judicial Commissioner.

Superintend-
ence and
control of
subordinate
Courts.

“Section 21.—(1) The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

“(2) The Judicial Commissioner or an Additional Judicial Commissioner appointed by him shall from time to time visit, and inspect the proceedings of, the Civil Courts subordinate to the Court of the Judicial Commissioner, and shall give such directions on matters not provided for by law as may be necessary to secure the due administration of justice.

¹ Act V of 1908.

² Act IX of 1887.

"(3) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the District Court shall superintend and control all other Civil Courts in the local area within its jurisdiction.

"Section 22. Notwithstanding anything contained in the Code of Civil Procedure, 1908,¹ and in the Provincial Small Cause Courts Act, 1887,² the District Court may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit:

Power to distribute business.

"Provided that, except in so far as it may affect the exclusive jurisdiction of a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

"Section 23.—(1) No Judge or Additional Judge of a Court under this Act shall hear or determine any suit, appeal, or other proceeding to which he is a party or in which he is personally interested.

Judges not to try cases in which they are personally interested.

"(2) If any such suit, appeal, or other proceeding comes before any Judge or Additional Judge of a subordinate Court, he shall forthwith transmit the record of the case to the Court empowered to transfer cases to which he is subordinate, with a report of the circumstances attending the reference, and such superior Court shall thereupon hear and determine the case or transfer it to some other Court.

"Section 24. The Judges of District Courts and Subordinate Judges shall be appointed by the Local Government.

Appointment of Judges and Subordinate Judges.

"Section 25.—(1) The Local Government may fix the number of Munsifs to be appointed and, when there is any vacancy in that number, the Judicial Commissioner may, subject to the rules, if any, made under sub-section (2), appoint such person to the same as he thinks fit.

Appointment of Munsifs.

"(2) The Court of the Judicial Commissioner may, with the previous sanction of the Local Government, make rules as to the qualifications of persons to be appointed Munsifs.

"Section 26.—(1) The Local Government may, whenever it thinks it necessary or expedient so to do, appoint an Additional Judge or Judges to any District Court, or to the

Additional Judges.

¹ Act V of 1908.

² Act IX of 1887.

Court of a Subordinate Judge or of a Munsif, and any such Additional Judge shall exercise the jurisdiction of the Court to which he is appointed and the powers of a Judge thereof, subject to any general or special orders of the Local Government as to the class or value of suits and appeals which he may try, hear and determine, and subject also, in respect of the distribution of the business of the Court, to the control of the Judge thereof.

“(2) An officer may be appointed an Additional Judge of one or more Courts, and an officer who is a Judge of one Court may be appointed an Additional Judge of another Court or of other Courts.”

Place of
sitting of
Courts.

“Section 28. Every Civil Court shall be held at such place or places as the Local Government may, by notification, direct, or, in the absence of any such direction, at any place within the local limits of the jurisdiction of the Court.”

Law
administered.

As to the law to be administered in the Central Provinces, see the Central Provinces Laws Act, 1875 (XX of 1875), as amended by Acts VI 1878; II of 1879; IV of 1882; X of 1882; XIII of 1889; VIII of 1890; XII of 1891.

Certain zamindaries and jagirdaris in the Central Provinces, specified in Acts XIV of 1874, Schedule I, Part VI, and XV of 1874, Schedule VI, Part VI, are Scheduled Districts.

Central Provinces Village Panchayat Act, 1920.¹

Establishment
of Panchayats.

Section 5 of this Act gives power to the Deputy Commissioner to establish a Panchayat² for a circle comprising a village or group of adjacent villages as he thinks fit.

No circle so formed shall include villages forming part of different *tahsils*, or subject to the authority of more than one Local Board.

Members of
Panchayat.

“Section 6. A Panchayat shall consist of such number of Panchas,³ not being less than nine or more than fifteen, as the Deputy Commissioner may in each case think suitable.

Disqualifica-
tion of a
Panch.

“Section 7. No person shall be eligible as a Panch if such person—

(a) is not a British subject, or a subject of any State in India;

(b) is in the service of the Government or any local authority;

¹ C. P. Act V of 1920.

² Court of arbitration.

³ Members of the Panchayat; s. 2 (iii).

- (c) has been adjudged by a competent Court to be of unsound mind;
- (d) is under twenty-one years of age;
- (e) has been dismissed from the service of the Government or any local authority for misconduct, and has been declared to be disqualified for employment in the public service;
- (f) has been sentenced by a criminal Court, whether within or without British India, to imprisonment for an offence punishable with rigorous imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under section 108, 109, or 110 of the Code of Criminal Procedure,¹ such sentence or order not having been reversed or remitted, or the offender not having been pardoned;
- (g) has been debarred from practising as a legal practitioner by order of any competent authority;
- (h) has under any law for the time being in force become ineligible to be a member of any local authority;
- (j) holds any salaried office or place of profit in the gift or disposal of the Panchayat, while holding such office or place;
- (k) has directly or indirectly any share or interest in any contract with, by or on behalf of, the Panchayat, while owning such share or interest:

“Provided that in cases (e), (f), (g), (h), (j), and (k) the disqualification may be removed by an order of the Local Government in this behalf.”

“*Explanation.*—A person shall not, by reason of being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the Company and the Panchayat.”

“Section 8.—(1) Subject to the provisions of sections 7 and 11, every resident *mukaddam*² of a village in the circle shall be ex-officio a Panch.”

“(2) The remaining Panchas shall be elected from among the male owners of houses and proprietors or tenants of land

Ex-officio
Panchas.

Election of
other Panchas.

¹ Act V of 1898.

² “Mukaddam” means the head-man of a village appointed under the Central Provinces Land Revenue

Act (C. P. II of 1917), and includes also “mukaddam gumashta,” and in ryotwari villages, “patel”: C. P. Act V of 1920, s. 2 (iii).

permanently resident within the circle, in accordance with rules made under section 68, and shall hold office for such period as may be prescribed in those rules."

As to the election of a Sarpanch (President), see section 9. As to the resignation of a Sarpanch or Panch, see section 10. As to a Sarpanch or Panch ceasing to hold office and his removal, see section 11.

Constitution of
Village Courts.

"Section 31. Wherever a Panchayat has been established, the Deputy Commissioner may, subject to rules under section 68, appoint all or any of the Panchas to be a Village Court for the exercise of the powers conferred on the Village Court under this Act, and shall appoint one of such Panchas to be chairman.

Suits cog-
nizable by
Village Court.

"Section 32.—(1) Subject to such pecuniary or other limitations as the Deputy Commissioner may prescribe in accordance with rules made under section 68, the following suits shall be cognizable by a Village Court:—

- (i) suits for ascertained sums not exceeding Rs.50;
- (ii) suits for damage not exceeding Rs.50 for breach of contract not affecting immovable property;
- (iii) suits for specific movable property or for the value thereof not exceeding Rs.50; and
- (iv) suits for compensation for wrongly taking or injuring movable property not exceeding Rs.50 in value.

"Provided that no Village Court shall take cognizance of any suit—

- (i) on a balance of partnership account;
- (ii) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will;
- (iii) by or against Government or public officers in their official capacity or by or against any Panch being a member of the Village Court;
- (iv) by or against minors or persons of unsound mind;
- (v) in respect of any dispute or matter in which a suit or application may be brought or made before a Revenue Officer or in a Civil Court presided over by such officer.

"(2) The Local Government may direct by notification that any Village Court may try any suit of the nature described in sub-section (1) up to such value, not exceeding Rs.100, as may be specified in the notification.

"(3) With the written consent of both parties recorded in

the presence of the Village Court, suits of the nature described in sub-section (1), but the value of which does not exceed Rs.100, shall be triable by such Village Court."

As to the relinquishment of a portion of the claim, see section 38.

"Section 34. Every suit under this Act shall be instituted in the Village Court of the circle in which the defendant resides or all the defendants reside at the time of the commencement of the suit. Place of institution.

"Section 35. No Civil Court shall take cognizance of any suit which is cognizable under this Act by a Village Court unless or until the Deputy Commissioner has passed an order in writing under section 62." Exclusive jurisdiction in suits.

"Section 40.—(1) Any Civil Court may, in any case pending before it, require a Village Court to submit a report on— Execution of Commissions by Village Courts.

- (a) the assessment of profits or compensation for damage to property situated in the circle ;
- (b) the delimitation of boundaries between fields situated in the circle ;
- (c) the amount of maintenance which, having regard to the circumstances of the parties residing within the circle, should be payable."

"Section 61. With the previous sanction of the Commissioner, the Deputy Commissioner may, at any time, for reasons to be recorded in writing, disestablish any Village Court . . . for misconduct, incapacity, persistent neglect of duty, or other just and sufficient cause. Disestablishment of Village Court.

"Section 62.—(1) The Deputy Commissioner, whether on a reference under section 48 (Report of intricate and important cases for Deputy Commissioner's orders) or of his own motion, may, at any time, for just and sufficient cause, by an order in writing,— Deputy Commissioner may cancel jurisdiction or quash proceedings.

- (a) cancel the jurisdiction of any Village Court . . . with respect to any . . . case ; or
- (b) quash any proceedings of a Village Court . . . in any civil case at any stage thereof ; or
- (c) cancel the decree or order passed by any Village Court . . . in any civil case and direct the return or refund of any property, money . . . or compensation recovered realised or paid under such decree or order or in the course of the connected proceedings :

“Provided that except on the ground of fraud, no decree or order shall be cancelled by the Deputy Commissioner after the expiry of six months from the date of such decree or order.

Effect of order
under section
61 or 62.

“Section 63.—(1) The effect of an order passed under section 61 or 62 shall be to restore the civil . . . and criminal jurisdiction of such Court as would exercise jurisdiction if this Act did not apply.

“(3) When the jurisdiction of Civil . . . Courts is restored under this Act, decrees or orders passed by the Village Courts . . . and not cancelled under this Act may be executed by the Deputy Commissioner, who shall, as far as may be, follow the procedure laid down in sections 28, 29, and 38.

Disestablish-
ment of
Panchayat.

“Section 64.—(1) The Local Government may, at any time, by an order in writing, disestablish any Panchayat for misconduct, incapacity, persistent neglect of duty or other just and sufficient cause.

“(2) From the date of any such order—

(a) the Panchas shall vacate their office ;

(d) the provisions of section 63 shall be deemed to apply to all Civil . . . proceedings pending in the Village Court. . . .”

Rules.

As to the power to make rules, see section 68.

CHAPTER XVIII.

Coorg.

THE administration of civil justice in Coorg is dealt with by the Coorg Courts Regulation, 1901,¹ which contains the following provisions:—

“Section 2. Besides the Courts established under any ^{Grades of} other enactment for the time being in force, there shall be ^{Courts.} five grades of Civil Courts in the Province of Coorg, namely:—

- (1) the Court of the Munsif;
- (2) the Court of the Assistant Commissioner;
- (3) the Court of the Subordinate Judge;
- (4) the Court of the Commissioner;
- (5) the Court of the Judicial Commissioner.

“Section 3. The Governor-General in Council may ^{Appointment} appoint the Judicial Commissioner, and the Chief Com- ^{of Judges.} missioner may appoint² the Commissioner, the Subordinate Judge and the Assistant Commissioner.

“Section 4.—(1) The Chief Commissioner may appoint ^{Appointment} ^{of Munsifs.} Munsifs.

“(2) Every person appointed by the Chief Commissioner to be a Munsif shall, in the taluk or other local area to which he may be posted, have the powers of a Court of a Munsif.

“Section 5. The Chief Commissioner may, with the ^{Number of} previous sanction of the Governor-General in Council, fix, ^{Munsifs and} and with the like sanction vary, the number of Courts of ^{Assistant Com-} ^{missioners'} Courts. ^{Commissioners} Munsifs and Assistant Commissioners.

“Section 6. The Chief Commissioner may, with the ^{Power to fix} previous sanction of the Governor-General in Council, by ^{and vary local} notification in the local official Gazette, fix, and with the like ^{limits of} sanction, by like notification, vary, the local limits of the ^{Courts of first} original jurisdiction of each of the Courts of Munsifs and ^{and second} ^{grades.} Assistant Commissioners.

¹ Reg. I of 1901.

² Act XXXVIII of 1920, Sch. I.

High Court,
District Court
and control of
Civil Courts.

"Section 7.—(1) The Court of the Judicial Commissioner shall, for the purposes of all enactments relating to the civil jurisdiction for the time being in force, be deemed to be the High Court for the Province of Coorg."

For the purposes of the Indian Press Act, 1910,¹ the High Court at Madras is the "High Court" for Coorg.

"(2) The Court of the Commissioner shall for the said Province be deemed to be the principal Civil Court of original jurisdiction and the District Court, within the meaning of the Code of Civil Procedure.²

"(3) The control over all the Civil Courts in the said Province is vested in the Commissioner, subject to the general control of the Judicial Commissioner.

Original
jurisdiction of
various grades
of Courts.

"Section 8. Subject to the provisions of section 15 of the Code of Civil Procedure,³—

- (a) the jurisdiction of the Commissioner and the Subordinate Judge extends to all original suits;
- (b) the jurisdiction of an Assistant Commissioner extends to all original suits in which the amount or value of the subject-matter in dispute does not exceed three thousand rupees;
- (c) the jurisdiction of a Munsif extends to all original suits in which the amount or value of the subject-matter in dispute does not exceed five hundred rupees:

"Provided that the Chief Commissioner may, by notification in the official Gazette, extend the jurisdiction of any Munsif to all original suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees.

Appeals.

"Section 9. Subject to any law for the time being in force, appeals shall lie as follows:—

- (a) from the decrees and orders of Munsifs in original suits and proceedings, to the Commissioner:

Provided that the Commissioner may, subject to the orders of the Judicial Commissioner, refer any appeals so preferred to the Subordinate Judge;

- (b) from all decrees and orders of Assistant Commissioners in original suits and proceedings, and from decrees and orders of the Subordinate Judge in original suits

¹ Act I of 1910, s. 2 (c).

² Act V of 1908.

³ Corresponding with s. 15 of Act V of 1908, *post*, p. 315.

and proceedings of which the amount or value of the subject-matter does not exceed three thousand rupees, to the Commissioner;

- (c) from the decrees and orders of the Subordinate Judge in original suits and proceedings of which the amount or value of the subject-matter exceeds three thousand rupees, and from all the decrees and orders of the Commissioner in original suits and proceedings, to the Judicial Commissioner."

"Section 11. Notwithstanding anything contained in section 101 of the Code of Civil Procedure,¹ in any case in which the decision of the Court of the Commissioner or Subordinate Judge passed in appeal reverses or modifies the decree or order of the Court of original jurisdiction and is not declared by any law for the time being in force to be final, the Court of the Judicial Commissioner may admit a second appeal, if, on a perusal of the grounds of appeal and of copies of the judgments of the Lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice. Second appeals.

"Section 12. Notwithstanding anything contained in section 102 of the same Code, a second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes when the amount or value of the subject-matter of the original suit exceeds three hundred rupees :

"Provided that the Court of the Judicial Commissioner may admit a second appeal in such suits when the amount or value exceeds one hundred rupees, if, on a perusal of the grounds of appeal and of copies of the judgments of the Lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice.

"Section 13. The Commissioner may direct the business in the Courts subordinate to him to be distributed among such Courts in such way as he thinks fit : Distribution of business among subordinate Courts.

"Provided that no Court shall try any suit in which the amount or value of the subject-matter exceeds the jurisdiction conferred on it under this Regulation.

"Section 14. Except with the consent of the parties, no presiding officer of any Court having jurisdiction under this Regulation shall try any suit, appeal, or proceeding to or in Presiding officer of Court not to try suit in which he is interested.

¹ Act V of 1908, *post*, p. 345.

which he is a party or personally interested or any appeal against a decree or order passed by himself, or shall adjudicate upon any matter connected with or arising out of such suit, appeal or proceeding.

Procedure
when Judge is
interested, etc.

"Section 15.—(1) When any such suit, appeal, or proceeding comes before the presiding officer of any Court subordinate to the Judicial Commissioner, he shall forthwith, unless all the parties request him to proceed with the case himself, transmit the record to the Court to which he is immediately subordinate, with an explanation of his reasons for so doing. Such Court shall thereupon try the case itself, or transfer it for trial to a subordinate Court of competent jurisdiction.

"(2)¹ When an appeal or an application for revision is preferred to the Judicial Commissioner in respect of any decree or order which was passed by him in another capacity, or in which he is personally interested, he shall, unless all the parties request him to dispose of the case himself, transfer it for disposal to the High Court at Madras, or to such officer as the Governor-General in Council may appoint to be an Additional Judicial Commissioner for the disposal thereof.

"(3)² When an Additional Judicial Commissioner is appointed under sub-section (2), he shall, in disposing of any case transferred to him thereunder, have all the powers of the Judicial Commissioner under this Regulation."

Power to
invest Munsifs
with Small
Cause Court
jurisdiction.

"Section 18.³ The Chief Commissioner may, by notification in the local official Gazette, invest, within such limits as he may appoint, any Munsif with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits up to any amount not exceeding one hundred rupees.

Judicial
Commissioner
empowered to
hold Court
within or
without limits
of Coorg.

"Section 19. The Judicial Commissioner may, for the purpose of the exercise of any jurisdiction conferred on him under this Regulation, hold his Court at such place, either within or without the limits of the province of Coorg, as he from time to time thinks fit."

Laws
administered.

Coorg is a Scheduled District.⁴

¹ As amended by Reg. IV. of 1905.

² *Ibid.*

³ As amended by Act XXXVIII of 1920, Sch. I.

⁴ Acts XIV of 1874, s. 1, Sch. I, Pt. VII; XV of 1874, s. 2, Sch. VI, Pt. VII.

CHAPTER XIX.

MADRAS PRESIDENCY.

In addition to the Madras High Court¹ there are the following Courts of Civil jurisdiction in the Presidency of Madras, viz. :—

- (1) The Madras City Civil Court ;²
- (2) District Civil Courts ;³
- (3) Village Courts ;⁴
- (4) Panchayats ;⁵
- (5) Courts in certain specified tracts of country in the districts of Ganjam and Vizagapatam ;⁶
- (6) Courts in certain parts of the Godavari district ;⁷
- (7) Court for Laccadive Islands and Minnicoy ;⁸
- (8) Small Cause Courts.⁹

Madras City Civil Court.

A Civil Court was established in the town of Madras by the Local Government under powers given to it by the Madras City Civil Court Act, 1892 (VII of 1892).

That Act contains the following provisions :—

That Court has jurisdiction to receive, try, and dispose of ^{Jurisdiction of City Court.} all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras, except suits or proceedings which are cognizable—

- (a) by the High Court as a Court of Admiralty,¹⁰ or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate, or matrimonial jurisdiction, or

¹ *Ante*, chap. iii.

² Act VII of 1892 below, and *post*, pp. 204, 205.

³ Act III of 1873, *post*, p. 205.

⁴ Mad. Act I of 1889, as amended by Mad. Act II of 1920.

⁵ Mad. Reg. XII of 1816, *post*, p. 211.

⁶ Act XXIV of 1839, *post*, pp. 215–218.

⁷ *Post*, pp. 218–221.

⁸ *Post*, pp. 221, 222.

⁹ *Post*, chaps. xxiv, xxv.

¹⁰ See 53, 54 Vict. c. 27, s. 2 (8).

(b) by the Court for the relief of insolvent debtors, or

(c) by the Small Cause Court;¹

except that all suits cognizable by the Court of Small Causes of Madras whereof the amount or value of the subject-matter exceeds one thousand rupees may by the election of the plaintiff be instituted in the Madras City Court. Thereupon the provisions of the Act apply to such suits.²

As to the transfer of a case from the Madras Small Cause Court to the City Civil Court, see *post*, p. 265.

As to the method of valuation of land, a house, or a garden, see section 9 of the Act.

Appointment,
suspension and
removal of
Judges.

"Section 4. The Local Government may, by notification in the official Gazette, appoint so many persons as it may think fit to be Judges of the City Court; and may, for any misconduct, by a like notification, suspend or remove any Judge so appointed.

Judge of City
Court to be
Judge of Small
Cause Court.

"Section 5.—(1) Every person appointed a Judge of the City Court shall be, by virtue of his office, a Judge of the Small Cause Court with respect to cases cognizable by that Court.³

"(2) Every such Judge shall be liable to perform any duties of a Judge of the Small Cause Court which the Chief Justice of the High Court may require him to perform.

Powers of
Judges when
City Court
consists of
more than one
Judge.

"Section 6. When the City Court consists of more than one Judge—

- (a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
- (b) the Local Government may appoint any one of the Judges to be the principal Judge; and
- (c) the principal Judge may, from time to time, make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges thereof."

Law
administered.

"Section 8. All questions which arise in suits or other proceedings under this Act in the City Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction."

¹ Act VII of 1892, s. 18.

² Mad. Act V of 1916, s. 2.

³ As to what suits are cognizable

by the Small Cause Court; see *post*, pp. 258-261.

"Section 15. The Court authorised to hear appeals from Appeals. the City Court shall be the High Court.

"Section 16. Nothing in this Act contained shall affect the original civil jurisdiction of the High Court: Saving of original civil jurisdiction of High Court.

"Provided that—

- (1) if any suit or other proceeding is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final), ought to have been instituted in the City Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between attorney and client;
- (2) in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may at any stage thereof make an order transferring the same to the City Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein."

Civil Courts outside the Town of Madras.

Civil Courts in the Presidency of Madras outside the limits of the town of Madras and not including the tracts respectively under the jurisdiction of the Agent for Ganjam and Vizagapatam¹ were constituted by the Madras Civil Courts Act, 1873,² which, as amended by the Madras Act, 1885,³ and the Decentralisation Act, 1914,⁴ contains the following (amongst other) provisions:—

"Section 3.⁵ The number of District . . . Courts to be established or continued under this Act, shall be fixed, and may from time to time be altered, by the Local Government. Number of District Courts.

"Section 4.⁵ The number of Subordinate Judges and District Munsifs to be appointed under this Act for each district, shall be fixed, and may from time to time be altered by the Local Government. Number of Subordinate Judges and District Munsifs.

"Section 5.⁶ The place at which any Court under this Act shall be held may be fixed, and may from time to time be altered, in the case of a District Court or a Subordinate Court's locality.

¹ Act III of 1873, s. 1. See *post*, pp. 215–218.

² Act III of 1873.

³ Act XXI of 1885.

⁴ Act IV of 1914.

⁵ As amended by Act IV of 1914.

⁶ As amended by Act XXI of 1885, s. 2.

Judge's Court, by the Local Government; in the case of a District Munsif's Court by the High Court.

"The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.

Appointment to vacancy in office of District Judge or Subordinate Judge.

"Section 6.¹ Whenever the office of the Judge of a District Court (hereinafter called a 'District Judge') or of a Subordinate Judge under this Act is vacant, the Local Government shall appoint to the office such duly qualified person as it thinks proper.

Appointment to vacancy in office of District Munsif.

"Section 7.¹ Whenever the office of a District Munsif under this Act is vacant, the High Court shall appoint to the office such person as it thinks fit; provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

Publication of appointments.

"Every appointment made under this section shall be published in the same manner as appointments made by the Local Government.

Annulment of appointments.

"The Local Government may, for good and sufficient reason, annul any appointment made under this section."

Local limits of jurisdiction of District Court or Subordinate Judge.

"Section 10. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Judge or Subordinate Judge under this Act:

Local limits of jurisdiction of each of several Subordinate Judges.

"Provided that, where more than one Subordinate Judge is appointed to any district, the District Judge may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

"The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs.

"Section 11.² The High Court shall fix, and may from time to time modify, the local jurisdiction of District Munsifs.

"If the High Court assigns the same local jurisdiction to two or more Munsifs, it shall declare which of them shall be deemed the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general order in this behalf, be directed by the District Judge.

¹ As amended by Act IV of 1914.

² As amended by Act XXI of 1885, s. 8.

"Section 12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure,¹ to all original suits and proceedings of a civil nature. Jurisdiction of District Judge or Subordinate Judge in original suits.

"The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed three thousand rupees."² Jurisdiction of District Munsif.

This applies also to execution proceedings.³

"Section 13.⁴ Regular or special appeals⁵ shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court. Appeals from decrees of District Court.

"Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court: Appellate jurisdiction of District Court.

"Provided that, whenever a Subordinate Judge's Court is established in any District at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter: Appellate jurisdiction of Subordinate Judge.

"Provided also, that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the District." Disposal of appeal by District Judge.

It has been held that a District Judge cannot transfer to a Subordinate Judge an appeal which was part-heard and pending before him.⁶

¹ Act V of 1908, *post*, chap. xxvii.

² As amended by Mad. Act III of 1916, s. 2.

³ *Shanmuga Pillai v. Ramanathan Chetti* (1894), 17 Mad., 309. See *Narasayya v. Venkatakrishnayya* (1884), 7 Mad., 397.

⁴ As amended by Act XII of 1891, Sch. I.

⁵ Now called appeals from original decrees (*post*, pp. 334, 335) and second appeals (*post*, pp. 342, 343).

⁶ *Kumarasami Reddier v. Subbaraya Reddier* (1899), 23 Mad., 814. See, however, *Palanisami Cowndan v. Thomdama Cowndan* (1902), 26 Mad., 595.

Valuation of suits for immovable property.

"Section 14.¹ When the subject-matter of any suit or proceeding is land, a house, or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870,² s. 7, cl. v."

As to the valuation of an appeal to His Majesty in Council, see Act V of 1908, s. 110, *post*, pp. 881, 882.³

Valuation.

As to the valuation of suits for immovable property for the purpose of jurisdiction, see VII of 1870, s. 7, cl. v; Acts III of 1873, s. 14; VII of 1887, ss. 8, 6; *Seshagiri Row v. Narayanaswami Naidu* (1914), 88 Mad., 795, and *ante*, pp. 11, 12.

As to the law to be administered by the Courts, see section 16 of the Act.⁴

Judges not to try suits in which they are interested;

"Section 17. No District Judge, Subordinate Judge or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit."⁵

nor to try appeals from decrees passed by them in other capacities.

"No District Judge, or Subordinate Judge, shall try any appeal against a decree or order passed by himself in another capacity."⁶

Mode of disposing of such suits and appeals.

There is nothing to prevent a District Judge trying an appeal in a case which has been transferred from his Court to that of a Subordinate Judge.⁷

"When any such suit, proceeding or appeal comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate. The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure,⁸ section 24.

"Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

Suspension of Judge by Local Government.

"Section 18. Any District Judge, Subordinate Judge, or District Munsif may, for any misconduct, be suspended or removed by the Local Government.

¹ This section is repealed in local areas to which rules under s. 3 of the Suits Valuation Act, 1887 (VII of 1887) apply. See s. 6 of that Act. See *Seshagiri Row v. Narayana Swami Naidu* (1914), 88 Mad., 795.

² Act VII of 1870.

³ *Pichayee v. Sivagami* (1891), 15 Mad., 287.

⁴ As to custom varying Mahome-

dan laws, see *Muhammad Ibrahim Rowther v. Shaiikh Ibrahim Rowther* (1922), 49 I. A., 119; 45 Mad., 308; 24 Bom. L. R., 944.

⁵ See *Venkatapathi Nayanivaru v. Mahomed Sahib* (1913), 88 Mad., 581.

⁶ *Ibid.*

⁷ *Palanisami Cowndan v. Thondama Cowndan* (1902), 26 Mad., 595.

⁸ Act V of 1908.

"Section 19. The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

Suspension of Subordinate Judge by High Court.

"The High Court shall immediately report the circumstances of such suspension, and the Local Government shall make such order thereon as it thinks fit.

"Section 20. The High Court may suspend any District Munsif who is alleged to have misconducted himself, or may appoint a Commission for inquiring into his alleged misconduct.

Suspension of District Munsif by High Court Commission of Inquiry.

"The provisions of the Public Servants' Inquiries Act, 1850 (XXXVII of 1850)¹ (*for regulating inquiries into the behaviour of public servants*), shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Exercise by High Court of powers conferred on Government by Act XXXVII of 1850.

"On receiving the report of the result of any such inquiry, the High Court may, if it think fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

"Section 21. The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

Suspension of District Munsif by District Judge.

"Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit."

Report to High Court.

As to ministerial officers, see sections 22-24A of the Act as amended by Madras Act VI of 1919, s. 2.

"Section 25. In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the senior Subordinate Judge of the district shall without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes and the like, and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

Temporary discharge of duties of District Judge.

"Section 26. The District Judge, on the occurrence

Vacancy in office of

¹ As amended by Act I of 1897.

District
Munsif.

within his district of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office; and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

Control of
Civil Courts of
district.

"Section 27. Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any district is vested in the District Judge.

Investiture of
Subordinate
Judge with
Small Cause
jurisdiction.

"Section 28.¹ The High Court may, by notification in the official Gazette, invest, within such local limits as it shall from time to time appoint, any District or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred, and any District Munsif with the same jurisdiction up to the amount of rupees two hundred, and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the District or Subordinate Judge or Munsif so invested."

Investiture of
District
Munsif with
similar
jurisdiction.

As to the execution of a decree after such withdrawal, see *Zamindar of Vallur v. Adinarayudu* (1896), 19 Mad., 445.

Village Courts.

The Madras Village Courts Act, 1888,² as amended by Madras Acts IV of 1904 and II of 1920, contains the following:—

Establishment
of Village
Courts.

"Section 6. The Governor-General in Council may from time to time by order to be notified in the district Gazette—

- (1) group two or more villages and establish one Village Court³ for them in lieu of the several Village Courts previously existing therein;
- (2) constitute divisions in any village and establish a separate Village Court for each of such divisions in lieu of the Village Court previously existing in such village;
- (3) establish a new Village Court for any specified area.

¹ As amended by Acts XXI of 1885 and IV of 1914.

² Mad. Act I of 1889.

³ "Village Court" means the Court

of a Village Munsif appointed under s. 7, or a Panchayat Court established under s. 9 of Mad. Act I of 1889; Mad. Act II of 1920, s. 4.

"Section 7. In villages where there are no Panchayat Courts Village Munsifs¹ shall be appointed by the Collector in the manner prescribed; provided that no person not residing within the village shall be eligible for that office. Appointment of Village Munsifs.

"Section 8. The Collector of the District may suspend or remove a Village Munsif or a member of a Panchayat Court for incapacity, neglect of duty, misconduct, or other just and sufficient cause, and shall do so, on a requisition by the District Judge,² for like cause appearing in the judicial proceedings of a Village Court. Suspension or removal.

"From every order of suspension or removal, an appeal may be made within three months to the Board of Revenue if the order was passed by the Collector without orders from the District Judge, or to the High Court if passed upon such orders. The decision of the Board of Revenue or High Court, as the case may be, on all such appeals shall be final.

"Section 9.—(1) The Governor in Council may, by order to be notified in the District Gazette, constitute a Panchayat Court as hereinafter provided for any village, group of villages, or part of a village; and thereupon no Court of a Village Munsif appointed under section 7 shall exercise jurisdiction under the Act in any part of such area. Panchayat Court.

"(2) For every Court so established the Collector shall determine the number of members, provided that such number shall not be less than five nor more than twelve.

"(3) Subject to such rules as may be made by the Governor in Council, the members of the Panchayat Court shall be appointed by election.

"(4) Subject to such rules as may be made by the Governor in Council, a member of a Panchayat Court shall hold office for a term of three years.

"(5) A Panchayat Court shall elect one of its members to be its president according to the rules proscribed.

"In the absence of the president the members present and constituting the Court shall elect from among themselves a president for the purpose of that sitting.

"(6) Three members of a Panchayat Court shall constitute

¹ "Village Munsif" means the Judge of the Court of a Village Munsif established under the Act and, except in ss. 7 and 16, includes the president of a Panchayat Court:

Mad. Act II of 1920, s. 4.

² I.e. the District Judge of the district within the local limits of whose jurisdiction the Village Court is situate: Mad. Act I of 1889, s. 5.

a quorum, and the decision of the majority present shall be the decision of the Court :

“Provided that in the case of equality of votes the president shall have a casting-vote.

“(7) The Governor in Council may, by order notified in the District Gazette, disestablish any Panchayat Court.”

Cognizance of
suits by
Village Courts.

“Section 13. The following are the suits which shall be cognizable by Village Courts (namely)—claims for money due on contract, or for personal property, or for the value of such property, when the debt or demand does not exceed in amount or value the sum of fifty¹ rupees whether on balance of account or otherwise :

“Provided that no action be brought in any such Court—

- (1) on a balance of partnership account unless the balance shall have been struck by the parties or their agents ;
- (2) for a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will ;
- (3) for rent of land,² unless such rent be due upon a written contract signed by the defendant ;
- (4) by or against Government or public officers in their official capacity ;
- (5) by and against minors or persons of unsound mind.”

In these cases the jurisdiction of the Village Courts is concurrent with that of Small Cause Courts.³

Jurisdiction up
to Rs.200 by
consent.

“Section 14. With the written consent of both parties executed before the Court a Village Court may hear and determine suits of the nature described in section 13, the amount or value of which does not exceed Rs.200.

Court in which
suit to be
instituted.

“Section 15. Subject to the provisions contained in section 16, every suit brought under this Act shall be instituted in the Court of the Village Munsif within the local limits of whose jurisdiction all the defendants at the time of the commencement of the suit reside, or carry on business, or personally work for gain.”

Section 16⁴ of the Act prevents a Village Munsif trying a suit in which he is personally interested.⁵

¹ Mad. Act II of 1920, s. 10.

Mad., 145.

² This includes house rent: *Narayana v. Kamakshamma* (1896), 20 Mad., 21.

⁴ As amended by Mad. Act II of 1920, s. 12.

⁵ Cf. *ante*, p. 208.

³ *Mirihan v. Kadarra* (1889), 18

"Section 19. If in the decision of a suit cognizable by a Village Court it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immovable property, or the legal character of either of them, or of those under whom they claim, or the existence of any contract or obligation, which if it had been the immediate subject-matter of the suit, would not be cognizable under this Act by a Village Court, it shall be competent to the Village Court to decide such question of title, legal character, contract or obligation as far as may be necessary for the determination of such suit, but such decision shall not be evidence of such title, legal character, contract or obligation in any other action, though between the same parties or their representatives.

Incidental determination of matters not cognizable by Village Courts.

"Section 20A.¹—(1) If a suit which is triable by a Village Court is instituted in the Court of a District Munsif,² he may, unless sufficient reason exists to the contrary, transfer it to the Village Court.

Transfer.

"(2) Where a District Munsif tries a suit which is triable by a Village Court and is of opinion that the suit ought to have been instituted in the Village Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between pleader and client.

"Section 2.—(1) The District Munsif may, on the application of any of the parties, withdraw any suit from a Village Court and try the suit himself, as if it had been instituted in his Court, or transfer it for trial to any other Village Court within the local limits of his jurisdiction.

Transfer of suits.

"(2)³ Pending disposal of any application under subsection (1) the District Munsif may order a stay of proceedings in the Village Court."

"Section 73. The District Munsif may, on a petition being presented within sixty days from the date of any decree or order of a Village Court by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village Court; or of its having exercised a jurisdiction not vested in it by law, or otherwise acted illegally or with material irregularity, or that the decree or order is

Revision by District Munsif of Village Court's proceeding.

¹ Inserted by Mad. Act II of 1920, s. 15.

² I.e. the District Munsif within

the local limits of whose jurisdiction the Village Court is situated.

³ Mad. Act II of 1920, s. 16.

clearly unjust;¹ and may pass such other decree or order as he thinks fit.²

"Except as above, every decree or order of a Village Court is final."

Rules.

"Section 78.³—(1) The Governor in Council may make rules to carry out all or any of the purposes of the Act.

"(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) regulate the appointments of Village Munsifs under section 7 ;

(b) regulate the appointments or elections of presidents and other members of the Panchayat Courts and prescribe their qualifications and disqualifications ;

(c) regulate the meetings and proceedings of Panchayat Courts and the attendance of members thereof."

Village-lands Disputes.

Dispute as to
village-lands.

By the Madras Village-lands Disputes Regulation, 1816,⁴ as amended by the Madras Survey and Boundaries Act, 1897,⁵ in cases of dispute respecting the occupying, cultivating, and irrigating of land which may arise between the proprietors or renters and their raiyats, in those districts only where the land-revenue is fixed, either permanently or for a term of years, persons having such claims may profer them to the Collector of the District in which the lands may be situated.⁶

The Collector shall refer the case to a Village Panchayat in case both parties consent.⁷

If either the plaintiff or the defendant object to a reference to a Village Panchayat, the case is to be referred to a District Panchayat.⁸

As to the finality of the award, see *Narayana v. Chandra* (1891), 15 Mad., 1.

If neither party agree to a reference to a District Panchayat,

¹ Mad. Act II of 1920, s. 24.

² See *Palani Goundan v. Kuppana Goundan* (1900), 24 Mad., 335; *Giddaya v. Jagannatha Rau* (1897), 21 Mad., 868.

³ Mad. Act II of 1920, s. 26.

⁴ Mad. Reg. XII of 1816.

⁵ Mad. Act IV of 1897.

⁶ Mad. Reg. XII of 1816, s. 4.

This is not limited to cases in which a breach of the peace has taken place or is apprehended: *Narayana v. Chandra* (1891), 15 Mad., 1.

⁷ *Ibid.* s. 5 (6).

⁸ *Ibid.* s. 5 (7). See *Chikati v. Peddakimedi* (1885), 8 Mad., 569.

the suit shall be dismissed, and the parties may seek redress from the District Court or any competent jurisdiction.¹

Ganjam and Vizagapatam.

By the Ganjam and Vizagapatam Act, 1839,² the rules for the administration of civil justice, as well as those for the collection of revenue, have no effect in certain specified tracts of country in the districts of Ganjam and Vizagapatam.³ Exemption of districts from certain rules.

In such Ganjam tracts the administration of Civil justice is vested in the Collector of Ganjam, and in such Vizagapatam tracts it is vested in the Collector of Vizagapatam, as Agents to the Governor of Madras.⁴ Civil justice.

The Madras Civil Courts Act, 1873,⁵ does not apply to these tracts.⁶

The Governor of Madras in Council can prescribe rules for the guidance of such Agents, and of the officers subordinate to them, and can determine to what extent the decision of the Agents in civil suits shall be final, and in what suits an appeal shall be to the High Court.⁷ Power to prescribe rules for Government Agents.

Upon the receipt of any appeal from a decree of either of the Agents, under rules prescribed by the Governor in Council, the High Court shall try and determine it in the same manner as appeals from the Provincial Courts.⁸ Appeals to High Court from decrees of Agents.

The following (amongst other) rules have been made with regard to the administration of civil justice:—

“Rule IX.—Clause 1. The Agent is empowered to appoint any of his principal native officers, or, with the sanction of Government, any other duly qualified persons, to exercise in such places and within such portion of the district assigned to the Agent as he may consider proper, the judicial and other powers vested in District Munsifs by the Madras Code and the Acts applicable to that Presidency: Provided that they shall not have cognizance of any suit in which any Zamindar or Bissoye⁹ or other Feudal Chief may be concerned.” Appointment of persons to act as Munsifs.

“Clause 3. The Agency Munsifs shall not, however, have Jurisdiction of Munsif.

¹ Mad. Reg. XII of 1816, s. 5 (8).

² Act XXIV of 1839.

³ S. 2. As to which of the tracts are Scheduled Districts, see Act XIV of 1874, s. 1, Sch. I, Pt. I, Nos. 1 and 2; Act XV of 1874, s. 2, Sch. VI, Pt. I, Nos. 1 and 2.

⁴ Act XXIV of 1839, s. 3.

⁵ *Ante*, pp. 205–210.

⁶ See Act XXIV of 1839, s. 2.

⁷ *Ibid.* s. 4.

⁸ Act XXIV of 1839, s. 6.

⁹ This signifies the Chief of a district in Orissa, collecting the Government revenue, and exercising police and judicial authority.

cognizance of any suits exceeding in value Rs.500; nor of any suit in which any Zamindar, Bissoye, Muttadar,¹ or other Feudal Hill Chief may be concerned."

Jurisdiction of
Divisional
Assistant.

By Rule X, Clause 1, other suits shall be instituted in the Court of the Divisional Assistant: Provided that the Divisional Assistant may transfer any civil suit of a value not exceeding Rs.500 instituted before him to any Munsif within his Division for trial.

Jurisdiction of
Agent.

"Clause 2. Suits exceeding Rs.5,000 in value shall be instituted in the Court of the Agent, who may, however, when he thinks proper, refer any such suit for the decision of the Divisional Assistant."

The Agent has jurisdiction over all suits of a civil nature arising in the Agency.²

Powers of
Courts.

"Clause 4. For the trial and determination of suits coming before them, the Agent and his Divisional Assistants are hereby vested with the same powers as are vested in the District and Subordinate Courts, or in the Collectors' Courts of the Madras Presidency, respectively, subject to the modification in these rules contained.

Original
jurisdiction.

"Clause 5. The Civil Courts of each grade shall receive, try and determine suits hereby declared to be cognizable by those Courts, if, in the case of suits for land or other immovable property, such land or property shall be situate within the limits to which their respective jurisdictions may extend, and in all other cases, if the cause of action³ shall have arisen or the defendant at the time of the commencement of the suit shall dwell or personally work for gain within such limits."

Appeals

"Rule XVI. From decrees in original suits disposed of by Munsifs, an appeal shall lie to the Divisional Assistant, and from decrees in all original suits disposed of by the Divisional Assistants, an appeal shall lie to the Agent: Provided the petition of appeal be preferred within six weeks from the date of passing the decree, or the appellant can show just and reasonable cause to the satisfaction of the Appellate Court for not having preferred it within that period.

"Rule XVII. The appellate jurisdiction of Divisional

¹ Equivalent to "Zamindar."

² *Gourachandra Patnaikudu*

Vikrama Deo (1899), 23 Mad., 367.

³ Cf. *ante*, pp. 44, 45.

Assistants shall be final: Provided that the Agent shall be at liberty, for special reason to be recorded, to admit a special appeal¹ in his Court within the time prescribed above for the admission of a regular appeal."²

"Rule XX. All decrees passed by the Agent on appeals from decrees of his subordinates shall be final, the High Court having the power on special grounds to require him to review his judgment, as directed by them."

This applies also to cases where the appeal has been summarily dismissed under Rule XVIII.³

"Rule XXI. From all decrees upon original suits passed by the Agent (with the single exception specified in the next following rule) an appeal shall lie to the High Court to be disposed of as provided in section 6, Act XXVI of 1889:⁴ Provided such appeal is preferred either to the Agent or the High Court within three months after the Agent's decision; or after that period, if sufficient cause can be assigned to the High Court for any delay which may have occurred by petition on the prescribed stamp, and subject to the other rules required in other appeals to the High Court as provided in the Madras Code and Acts applicable to the Presidency."

The High Court cannot transfer a suit from the Court of the Agent to the District Court.⁵

"Rule XXII. From the decrees of the Agent in suits wherein the landed possession of a Zamindar, Bissaye, or other Feudal Hill Chief may have proved the subject of litigation, an appeal will lie to the Governor in Council alone, who may refer any such appeal for the decision of the High Court: Provided that the decree of the latter Court shall not be carried into execution without the permission of the Governor in Council."

In dealing with an appeal the Governor in Council must act judicially and not on any consideration of political expediency.⁶

As to the execution of decrees, see Rules XXIV to XXVI.

Execution.

¹ I.e. a second appeal.

² I.e. a first appeal.

³ *Vikrama Deo (Sri Sri Sri) v. Raghunatha Patro* (1911), 86 Mad., 128, dissenting from *Jagannadha v. Gopanna* (1893), 16 Mad., 229.

⁴ *Ante*, p. 215.

⁵ *Maharajah of Jeypore v. Papayamma* (1900), 21 Mad., 339.

⁶ *Maharajah of Jeypore v. Gunapuram Deenabandhu Patnaick* (1904), 32 I. A., 45; 28 Mad., 42; 9 C. W. N., 257.

Power to alter
limit of tracts.

The Governor of Madras in Council can alter the limits of the tracts within the above districts.¹

Godavari District.

Certain parts of the Godavari District, viz. the Bhadrachalam Taluq, the Rakapilli Taluq, and the Rampa country, are a scheduled district.²

The following rules (amongst others) have been framed by Government for the guidance of the Government Agent of Godavari under section 6 of the Scheduled Districts Act (XIV of 1874).

Government
Agent.

"Rule I.—Clause 1. The Collector and District Magistrate shall, under the designation of Government Agent, be the Collector, District Magistrate, District Judge and Sessions Judge within the scheduled districts. His Sub-Collectors and Assistant Collectors and any other persons whom the Governor-General in Council may appoint shall be designated Assistant Government Agents.

Assistant Go-
vernment
Agents.

District
Munsifs.

"Clause 2. The Government Agent is empowered to appoint any of his principal native officers, or, with the sanction of Government, any other duly qualified persons to exercise, in such places and such portion of the scheduled districts as he may consider proper, the jurisdiction vested in the District Munsifs of the Madras Presidency³ subject to the modifications contained in these rules.

"Clause 3. Such Munsifs shall not have cognizance of any suits for real or personal property exceeding in value 300 rupees, nor shall they at any time have cognizance of any suit to which any Zamindar or any Mansabdar, Muttadar, or other feudal hill chief may be concerned: Provided that, subject to the proviso to clause 3 of Rule II,⁴ the Government Agent may transfer any suit in which a hill chief is concerned, if both parties desire such transfer or consent thereto and if the value of the suit does not exceed Rs.300, to the District Munsif within whose local jurisdiction the cause of action has arisen.

"Clause 4. . . . Suits of the amount cognizable by the District Munsifs shall be instituted in the Courts of those Munsifs alone: Provided, however, that the Government

¹ Act XXIV of 1839, s. 8.

² Act XIV of 1874, Sch. I, Pt. III.

³ *Ante*, pp. 205-210.

⁴ *Post*, p. 219.

Agent shall be at liberty at his discretion to transfer to his own Court or to that of an Assistant any suit cognizable by a District Munsif and that an Assistant Agent may similarly transfer any such suit to his own Court.

“Rule II.—Clause 1. Suits the value of the subject-matter of which does not exceed Rs.5,000, but does exceed Rs.800, shall be instituted in the Court of an Assistant Agent: Provided that the Agent shall be at liberty at his discretion to transfer any of the suits referred to in this clause to his own Court from that of an Assistant. Jurisdiction of Assistant Agent.

“Clause 2. The Agent and his Assistants are hereby invested with the same powers to try and determine suits as are vested in the Collectors' Courts and in the District and Subordinate Courts of the Madras Presidency respectively, subject to the modifications contained in these rules. Jurisdiction of Agent and Assistants.

“Clause 3. The Government Agent shall also be competent to try and determine suits for real and personal property exceeding Rs.5,000 in value, or for revenue paying land of which the annual produce exceeds Rs.500: Provided, however, that claims of succession to, or of any interest in, the estates of any feudal hill chief shall not be entertained in any Civil Court, but that in all such cases the Government Agent shall submit, through the Board of Revenue, the result of his inquiries for the orders of Government. Jurisdiction of Government Agent.

“Rule III.—Clause 1. The Civil Courts of each grade shall receive, try and determine suits hereby declared to be cognizable by those Courts if, in the case of suits for land or other immovable property, such land and property shall be situate within the limits to which their respective jurisdictions may extend, and in all other cases if the cause of action shall have arisen, or the defendant at the time of commencement of the suit shall dwell or personally work for gain within such limits. In no case will the Courts have jurisdiction to adjudicate upon property not within the jurisdiction of the Government Agent. Original jurisdiction.

“Provided that if in a suit not being one for land or other immovable property the defendant or all the defendants do not reside within the limits of the Agents' jurisdiction the suit shall not be instituted except with the previous consent of the Agent or the Divisional Assistant having jurisdiction over the Court in which application is made for the institution of the suit.

Case within jurisdiction of more than one Court.

"Clause 1A. Where a suit, which may be instituted in any one of two or more Courts subordinate to the Agent or his Divisional Assistant, is instituted in one of such Courts, the Agent or Divisional Agent, as the case may be, shall, on application by the defendant and after hearing the objections of the other parties, if any, determine in which of the several Courts having jurisdiction the suit shall proceed, and he may, where necessary, transfer the suit to such Court.

Appeals.

"Rule IV. In all original suits an appeal shall lie from the decree of a Munsif to the Court of an Assistant, and from the decree of an Assistant to the Court of the Agent.

"Rule V. The decision on appeal of an Assistant shall be final: Provided the Agent may for reasons to be recorded, allow a special appeal¹ to be presented to his Court against such decision."

Transfer of cases.

"Rule VII.—Clause 2. The Government Agent is empowered to transfer to his own or any other Court of equal or superior grade within the jurisdiction or to the Court of any officer in charge of a Revenue division of the Godavari District original suits and appeals pending in the Court of a Munsif or Assistant: Provided that he shall record the reason for so doing.

"Clause 3. The Government Agent is empowered to transfer original suits and appeals pending in his own Court:—

"(1) to the Court of any officer in charge of a Revenue division of the Godavari district;

"(2) with the consent of the Governor's Agent, Vizagapatam, to the Court of the Governor's Agent, Vizagapatam, or of any officer in charge of a Revenue division of the Vizagapatam district: Provided that he shall record his reasons for so doing.

"In the disposal of the suit, the Agent, Vizagapatam, or officer in charge of a Revenue division, Godavari or Vizagapatam, shall exercise the powers of the Agent, Godavari, under these rules, and be subject to the provisions of those rules which apply to the Court of the Agent, Godavari.

"Rule VIII. All decrees² passed by the Government

¹ I.e. a second appeal.

² "Decree" is to be construed as in the Civil Procedure Code (*post*, p. 385). It does not include an order

restoring a suit dismissed by an Assistant Agent for default: *Venkata Nagabushanam v. Mahalakshmi* (1917), 41 Mad., 825.

Agent on appeal from decrees of his subordinates shall be final, the High Court having the power on special grounds to require him to review his judgment as may be directed by them.

“Rule IX. From all decrees upon original suits passed by the Government Agent an appeal shall lie to the High Court.”

As to the execution of decrees, see Rule X.

“Rule XI.—Clause 1. The Government Agent is authorised, Panchayat. at his discretion, to refer any suit or special questions in a suit, whether pending before himself, his Assistant or Munsif, for examination and judgment by a Panchayat, to consist of three or five persons, to be selected by the Government Agent or by his Assistant, after the plaintiff and defendant have had notice and the witnesses have been assembled.

The Assistant Government Agents shall be competent to exercise a similar discretion in regard to suits pending before themselves or the Munsifs under these rules.”

“Rule XVI. All petitions against the proceedings of the Government Agent must, in the first instance, be submitted to the Government, and will be referred, when necessary, either to the High Court or the Board of Revenue, as the case may be.”

Laccadive Islands and Minnicoy.

The administration of justice in the Laccadive Islands and Minnicoy is provided for by the Laccadive Islands and Minnicoy Regulation, 1912,¹ which contains (amongst others) the following provisions:—

That Regulation, the Madras State Prisoners Regulation, Law 1819,² the State Prisoners Act, 1858,³ and the Scheduled Districts Act, 1884,⁴ are the only enactments in force in those islands. Laccadive Islands and Minnicoy. applicable.

All questions relating to any rights claimed or set up in the Civil Courts of the islands shall be determined in accordance with any custom not manifestly unjust or immoral governing the parties or property concerned, and in the

¹ Reg. I of 1912.

² Mad. Reg. II of 1819.

³ Act III of 1858.

⁴ Act XIV of 1874.

absence of any such custom, according to justice, equity and good conscience.¹

Constitution of
Civil Courts.

The local Amin of each island sitting with four or more assessors is the Civil Court for the island and has jurisdiction over all civil claims arising therein.²

Transfer of
suits.

The Collector or the Inspecting Officer, *i.e.* any officer directed by the Local Government or Collector to inspect the islands or any of them,³ may transfer any civil suit to his own file and shall then proceed to try it, sitting with two or more of the island assessors. The Collector may transfer any such suit from his own file to that of any of the Divisional officers, who shall proceed to try the case with two or more such assessors.⁴

Reference to
assessors.

The Collector or the Inspecting officer may refer any case for disposal or report to two or more of the island assessors.⁵

Appeals.

An appeal lies from the decision of the Amin to the Inspecting officer or to the Collector. The Collector may transfer any such appeal to the Inspecting officer or any of his Divisional officers for disposal.⁶

No appeal ordinarily lies from a decision of the Inspecting officer in the exercise of his original jurisdiction, but an appeal may be admitted by the Collector if sufficient grounds are shown. From a decision of a Divisional Officer in the exercise of his original jurisdiction an appeal lies to the Collector.⁷

An appeal lies to the Governor in Council from a refusal by the Collector to execute a decree or process issued by a mainland Court against an islander or by an island Court against a person residing in another island.⁸

With that exception an appeal lies to the High Court from any decision of the Collector in the exercise of his original jurisdiction.⁹

No second appeal lies in any case.¹⁰

Saving of
inherent power
of Civil Court.

Nothing in this Regulation shall be deemed to limit or otherwise affect the inherent power of a Civil Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the powers of the Court.¹¹

¹ Reg. I of 1912, s. 21.

² *Ibid.* s. 22.

³ *Ibid.* s. 2 (ii).

⁴ *Ibid.* s. 2.

⁵ *Ibid.* s. 25.

⁶ *Ibid.* s. 26 (1).

⁷ *Ibid.* s. 26 (2).

⁸ *Ibid.* s. 31.

⁹ *Ibid.* s. 26 (3).

¹⁰ *Ibid.* ss. 15, 27.

¹¹ *Ibid.* s. 32.

CHAPTER XX.

THE NORTH-WEST FRONTIER PROVINCE.

THE Courts of the North-West Frontier Province were constituted by the North-West Frontier Province Law and Justice Regulation, 1901,¹ which contains the following provisions :—

“Section 2.—(2) The Judicial Commissioner . . . shall be appointed by the Governor-General in Council.” Judicial
Commissioner.

“Section 6.—(1) Save as otherwise expressly provided by this Regulation or by any other enactment for the time being in force, in every enactment passed before the commencement of this Regulation and continuing in force, or thereby declared to be in force, in the North-West Frontier Province or in any part thereof, and in every appointment, order, scheme, rule, bye-law, notification or form heretofore made or issued thereunder, and for the purposes of the application of such enactment, appointment, order, scheme, rule, bye-law, notification, or form to the said Province, all references to the High Court or to the High Court of Judicature at Lahore² shall be construed as referring to the Judicial Commissioner, save as regards proceedings . . . under the Indian Trustee Act, 1866,³ the Trustees’ and Mortgagees’ Powers Act, 1866,⁴ the Indian Divorce Act,⁵ the Inventions and Designs Act, 1888,⁶ or sections 57 to 60 of the Indian Stamp Act, 1899,⁷ in respect of which proceedings the High Court at Lahore shall be the High Court.” Construction of
certain refer-
ences in enact-
ments in force.

As to the admission of legal practitioners, see Regulation VII of 1901, s. 9, as amended by Regulation II of 1912, s. 2.

As to the law applicable in the North-West Frontier Province, see sections 27-83 of this Regulation, and sections 2 and 3 of Regulation II of 1906.

¹ Reg. VII of 1901.

² Reg. I of 1919, s. 2.

³ Act XXVII of 1866.

⁴ Act XXVIII of 1866.

⁵ Act IV of 1869.

⁶ Act V of 1888, now represented by the Indian Patents and Designs Act, 1911 (II of 1911).

⁷ Act II of 1899.

Court of
Judicial
Commissioner.

"Section 42.—(1) Subject to the provisions of section 6, sub-section (1), clause (c), the Court of the Judicial Commissioner is the highest Court of Appeal or revision in the North-West Frontier Province.

"(2) The general superintendence and control over all other Courts shall be vested in, and all such Courts shall be subordinate to, the Judicial Commissioner."

Registrar, etc.

As to the appointment, suspension, and removal of a Registrar and other ministerial officers, see section 43 of the Regulation.

Rules.

As to the power of the Judicial Commissioner to make rules, see section 44 of the Regulation.

As to the procedure of the Judicial Commissioner in the exercise of civil jurisdiction, see section 46 of the Regulation.

Classes of sub-
ordinate
Courts.

"Section 47. Besides the Court of the Judicial Commissioner, the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887,¹ and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

- (a) the Divisional Court;
- (b) the Court of the District Judge;
- (c) the Court of the Subordinate Judge; and
- (d) the Court of the Munsif.

Civil divisions
and districts.

"Section 48.—(1) For the purposes of this Part, the Local Government shall divide the territories under its administration into civil divisions, and each civil division into civil districts.

"(2) The Local Government may alter the limits or the number of these divisions and districts.

Divisional
Courts.

"Section 49.—(1) The Local Government shall appoint as many persons as it thinks necessary to be Divisional Judges, and shall for each civil division establish a Divisional Court consisting of one or more such Judges.

"(2) The Local Government may, where a Divisional Court consists of more than one Judge, by general rule or special order determine which of them shall be deemed to be the senior.

District Courts.

"Section 50. The Local Government shall appoint as many persons as it thinks necessary to be District Judges,

¹ Act IX of 1887.

and shall post one such person to each district as District Judge of that district:

"Provided that the same person may, if the Local Government think fit, be appointed to be District Judge of two or more districts.

"Section 51. Subject to the provisions of this Regulation and of any other enactment for the time being in force, the Judicial Commissioner may, from time to time, make rules to provide for the exercise of any of the powers of a Divisional Court consisting of more than one Judge by one or more Judges of the Court: Distribution of business in Divisional Court.

"Provided that no decree, decision or order of any Court, not being an order within the meaning of the Code of Civil Procedure,¹ shall be reversed or modified by a single Judge of a Divisional Court consisting of more than one Judge.

"Section 52. Save as otherwise provided by any enactment for the time being in force, the Divisional Court and the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value. Original jurisdiction of Divisional and District Courts.

"Section 53. Save as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district: District Court to be principal Civil Court of original jurisdiction.

"Provided that—

(a) for the purposes of the Indian Divorce Act,² the Divisional Court shall be deemed to be the District Court for all districts comprised in the division; and

(b) the Local Government may direct that the Divisional Court shall, for any other purpose, be deemed to be the District Court or principal Civil Court of original jurisdiction for any district comprised in the division.

"Section 54. The Local Government may appoint as many persons as it thinks necessary to be Subordinate Judges. Appointment of Subordinate Judges.

"Section 55.—(1) The Local Government may fix the number of Munsifs to be appointed, and, whenever there is any vacancy in that number, the Judicial Commissioner may, subject to the rules (if any) made under sub-section (2), appoint such person to the same as he thinks fit. Appointment of Munsifs.

"(2) The Judicial Commissioner, with the previous sanction of the Local Government, may, from time to time, make

¹ Act V of 1908, s. 2 (14).

² Act IV of 1909.

rules as to the qualifications of persons to be appointed Munsifs.

Pecuniary
limits of
jurisdiction of
Subordinate
Judges and
Munsifs.

"Section 56.—(1) The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge or Munsif shall, in the case of the Subordinate Judge, be determined by the Local Government, and, in the case of a Munsif, from time to time by the Judicial Commissioner, either by including him in a class or grade, or otherwise as it or he thinks fit.

"(2) The jurisdiction in the case of a Subordinate Judge may be without limit, but in the case of a Munsif shall not extend to suits the value of which exceeds one thousand rupees.

Local limits of
their juris-
diction.

"Section 57.—(1) The local limits of the jurisdiction of a Subordinate Judge shall be such as the Local Government may define.

"(2) The local limits of the jurisdiction of a Munsif shall be such as the Judicial Commissioner may, from time to time, define.

"(3) When the Local Government posts a Subordinate Judge, or the Judicial Commissioner posts a Munsif, to a district, the local limits of the district shall, in the absence of any direction to the contrary, be deemed to be the local limits of his jurisdiction.

Special Judges
and Benches.

"Section 58.—(1) The Local Government may confer on any person all or any of the powers conferable under this Regulation on a Subordinate Judge or Munsif with respect to particular classes of cases, or with respect to cases generally in any local area, and may withdraw, or suspend the exercise of, any powers so conferred.

"(2) The Local Government may direct any uneven number of persons invested with powers of the same description and exercisable within the same local area under this section to sit together as a bench; and those powers shall, while the direction remains in force, be exercised by the bench so constituted, and not otherwise.

"(3) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

"(4) Persons on whom powers are conferred under this section shall be called Special Judges, and such persons and the benches constituted under this section shall be deemed,

for the purposes of this Regulation, to be Subordinate Judges or Munsifs, as the Local Government may direct.

"Section 59. The Local Government may confer, within such local limits as it thinks fit, upon any District Judge, Subordinate Judge, or Munsif the jurisdiction of a Court of Small Causes under the Provisional Small Cause Courts Act, 1887,¹ for the trial of small causes up to such value, not exceeding five hundred rupees, as it thinks fit, and may withdraw any jurisdiction so conferred." Power to confer Small Cause Court jurisdiction.

"Section 70.—(1) Any Divisional Judge, District Judge, or Subordinate Judge may be suspended or removed from office by the Local Government. Suspension and removal.

"(2) Any Munsif may, subject to the control of the Local Government, be suspended or removed from office by the Judicial Commissioner.

"Section 71.—(1) Subject to the general superintendence and control of the Judicial Commissioner, every Divisional Court shall control all other Civil Courts in the division. Controlling powers of Divisional and District Courts.

"(2) Subject as aforesaid and to the control of the Divisional Court, every District Court shall control all other Civil Courts in the district.

"Section 72.—(1) Every Divisional Court may exercise, as regards the Courts under its control, the same powers of withdrawal, trial, and transfer as are conferred by section 24 of the Code of Civil Procedure² on a District Court. Power of Divisional Court to transfer business.

"(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

"Section 73. Notwithstanding anything contained in the Code of Civil Procedure,² every Divisional Court and District Court may, from time to time, by written order, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit: Power to distribute business.

"Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction."

"Section 75.—(1) A Divisional or District Court or any Court under the control of a District Court may, from time to time, fine, in an amount not exceeding one month's salary, Power to fine ministerial officers.

¹ Act IX of 1887.

² Act V of 1908.

any ministerial officer of the Court for misconduct or neglect in the performance of his duties.

“(2) The District Court, subject to the general control of the Divisional Court, may, on appeal or otherwise, reverse or modify any order made under sub-section (1) by any Court under its control other than a Court of Small Causes, and may, from time to time, of its own motion, fine up to the amount of one month's salary any ministerial officer of any Court under its control other than a Court of Small Causes.”

Delegation of
District
Judge's powers.

“Section 76. A District Court, with the previous sanction of the Local Government, may, from time to time, delegate to any Subordinate Judge in the district the powers conferred on a District Court by sections 71, 78, and 74 of this Regulation and section 24 of the Code of Civil Procedure,¹ to be exercised by the Subordinate Judge in any specified portion of the district subject to the control of the District Court.

Appeals from
original
decrees.

“Section 77. Save as otherwise provided by any enactment for the time being in force, appeals from decrees of Courts exercising original jurisdiction shall lie as follows, namely :—

- (a) to the District Judge from a decree of a Munsif in a small cause of value not exceeding five hundred rupees or in an unclassified suit² of value not exceeding one hundred rupees;
- (b) to the Judicial Commissioner from a decree of a Subordinate Judge or District Judge in any original suit of value exceeding five thousand rupees or from a decree of a Divisional Court in any original suit; and
- (c) to the Divisional Court from a decree passed in an original suit by a Munsif, Subordinate Judge or District Judge and not hereinbefore provided for :

“Provided that the Judicial Commissioner, with the previous sanction of the Local Government, may, from time to time, by notification in the Gazette of India, direct that appeals lying to the Divisional Court under clause (c) from all or any of the decrees passed in an original suit by any Munsif or Subordinate Judge shall be preferred to such District Judge as may be mentioned in the notification, and the

¹ Act V of 1908.

² *I.e.* a suit which is neither a land suit nor a small cause; Reg. VII of 1901, s. 2 (f).

appeals shall thereupon be preferred accordingly, and the Court of such District Judge shall be deemed to be a Divisional Court for the purposes of all appeals so preferred."

"Section 79. A further appeal shall lie to the Judicial Commissioner in any of the following cases from an appellate decree of a Divisional Court on any ground which would be a good ground of appeal if the decree had been passed in an original suit,¹ namely:—

Appeals from appellate decrees of Divisional Court.

(a) in a small cause or unclassified suit,²—

- (i) if the value of the suit is one thousand rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value, and the decree of the Divisional Court varies or reverses otherwise than as to costs the decree of the Court below; or
- (ii) if the value of the suit is two thousand five hundred rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value:

(b) in a land-suit,—

- (i) if the value of the suit is two hundred and fifty rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value, and the decree of the Divisional Court varies or reverses otherwise than as to costs the decree of the Court below; or
- (ii) if the value of the suit is one thousand rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value."

As to the limitation for such appeals, see Regulation VII of 1901, s. 82.

"Section 80. Subject to the provisions of sections 79 and 84 of this Regulation, and to those of section 109 of the Code of Civil Procedure,³ an appellate decree of a District Judge or Divisional Court shall be final.

Appellate decrees of District Judge or Divisional Court otherwise final.

"Section 81.—(1) The Local Government may confer on a Subordinate Judge the powers of a District Judge for the

Power to confer appellate jurisdiction on Subordinate Judge.

¹ *Ante*, p. 228.

² A suit which is neither a land-

suit nor a small cause, s. 2 (f).

³ Act V of 1908.

purpose of hearing appeals from the Courts of Munsifs in any local area, and may withdraw those powers.

"(2) A Subordinate Judge shall, for purposes connected with the exercise of powers so conferred, be deemed to be a District Judge."

Reference to
Judicial
Commissioner.

"Section 83. Subject to the provisions of the Civil Procedure Code¹ as to stating a case for the opinion of the High Court, which is in this case the Judicial Commissioner, every such appeal shall, except when the value of the suit is one thousand rupees or upwards, be deemed to be an appeal in which the decree is final.

Revision.

"Section 84.—(1) The Judicial Commissioner may, from time to time, call for the record of any civil case in which no appeal lies to him, and may pass such order in the case as he thinks fit,—

- (a) if the Court, by which the case was decided, appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction with material irregularity; or
- (b) if, on application made to him, the Judicial Commissioner is of opinion that there is an important question of law or custom involved, and that such question requires further consideration:

"Provided as follows:—

- (i) no application under clause (b) shall be admitted after the expiration of ninety days from the date of the order in respect of which the application is made, unless the applicant satisfies the Judicial Commissioner that he had sufficient cause for not² making the application within that period:
- (ii) no such application shall be admitted in a small cause under the value of one thousand rupees or in an unclassified suit³ under the value of two hundred rupees:
- (iii) on any such application the Judicial Commissioner shall not revise the decision of the Court below except in so far as such decision involves the question

¹ Act V of 1908, s. 113.

² In computing the period of limitation the provisions of the Indian

Limitation Act (IX of 1908) apply; Reg. VII of 1901, s. 84 (2).

³ *Ante*, p. 229, note 2.

of law or custom in respect of which the application has been admitted: and

- (iv) when any such application has been admitted, the Judicial Commissioner shall, subject to the last foregoing proviso, treat the matter of the application as if it were an appeal.

“Explanation.—A question of procedure is not a question of law or custom within the meaning of clause (b).”

Section 115¹ of the Code of Civil Procedure (Act IX of 1908) does not apply to the North-Western Frontier Province.²

“Section 86.—(1) When the business pending before any Divisional Court consisting of one Judge, or before the Court of any District Judge, requires the aid of an Additional Judge for its speedy disposal, the Local Government may appoint to the Court an Additional Divisional Judge or an Additional District Judge, as the case may be.”

Additional
Divisional and
District
Judges.

“(2) An Additional Judge so appointed shall discharge any of the functions of a Divisional Judge or District Judge, as the case may be, which the Divisional Judge or District Judge may assign to him, and shall, as regards the discharge of those functions, and subject to the provisions of sub-section (3), be deemed, for the purposes of this Regulation and of any other enactment for the time being in force, to be a Divisional Judge or District Judge.

“(3) Where an Additional Divisional Judge is appointed to a Divisional Court under sub-section (1), the Court shall not be deemed, for the purposes of this Regulation, to be a Divisional Court consisting of more than one Judge.

“Section 87. Subject to the provisions of any enactment for the time being in force, the Judicial Commissioner may, of his own motion or on the application of a party, withdraw any civil proceeding which is pending in any Court subordinate to him and for the withdrawal of which provision is not made in sections 24 and 141 of the Code of Civil Procedure,³ and may either himself dispose of the proceeding or transfer it for disposal to any other subordinate Court.”

Transfer of
civil cases.

“Section 87A.⁴—(1) When an appeal or an application for revision is preferred to the Judicial Commissioner in respect of any decree or order which was passed by him in another

Procedure
when Judicial
Commissioner
is interested in
decree.

¹ Revision, *post*, pp. 354, 355.

² Reg. VII of 1901, s. 84 (8).

³ Act V of 1908.

⁴ Inserted by Reg. I of 1906, s. 2.

capacity, or in which he is personally interested, he shall, unless all the parties request him to dispose of the case himself, transfer it for disposal to the High Court of Judicature at Lahore,¹ or to such officer as the Governor-General in Council may appoint to be an Additional Judicial Commissioner for the disposal thereof.

“(2) When an Additional Judicial Commissioner is appointed under sub-section (1), he shall, in disposing of any case transferred to him thereunder, have all the powers of the Judicial Commissioner under this Regulation.”

Military
Transport.

Under the Punjab Military Transport (Animals) Act, 1908 (Punjab Act I of 1908), which now applies to the North-West Frontier Province and does not apply to the Punjab, a person who is dissatisfied as to the order made by a Collector as to the apportionment of compensation,² or as to the deposit thereof,³ may require the Collector to refer the matter in dispute to the decision of the principal Civil Court of original jurisdiction, unless a special Judicial officer has been appointed by the Local Government to perform the functions of the Court within specified local limits.⁴

The order of the Court is final.⁵

Upper Tanawal.

The Hazara (Upper Tanawal) Regulation, 1900,⁶ has made special provision for the administration of certain portions of the territories constituting the estate of the Chief of Amb in the district of Hazara in the Punjab.

Exclusion of
certain laws.

Except as hereinafter mentioned, no law or enactment is in force in Upper Tanawal.⁷

Laws in force.

The Local Government may declare that any enactment is in force in Upper Tanawal, or in any specified local area therein, either wholly or to the extent, or with the modifications, set forth in the notification.⁸

Vesting of
jurisdiction.

The administration of justice both civil and criminal—

- (a) in Phulera (the boundaries of which are specified in the Schedule) vests in the Khan of Phulera, and
- (b) in the rest of Upper Tanawal vests in the Chief of Amb.⁹

¹ Reg. I of 1919, s. 2.

² S. 17.

³ S. 23.

⁴ S. 21 (1).

⁵ S. 21 (2).

⁶ Reg. II of 1900.

⁷ *Ibid.* s. 3.

⁸ *Ibid.* s. 4.

⁹ *Ibid.* s. 5.

In administering civil justice, the rule of decision in Upper Tanawal is—

Mode of administering justice.

- (a) where any custom, which is reasonable and equitable is established—such custom ;
- (b) where no such custom is established—justice, equity, and good conscience.¹

Save as provided by the Regulation or by any law for the time being in force thereunder in Upper Tanawal, no Civil, Criminal, or Revenue Court established without the limits of Upper Tanawal has jurisdiction within such limits.²

Exclusion of jurisdiction of ordinary tribunals.

The Local Government may, either of its own motion or upon the report of the Commissioner of the Peshawar Division, revise any decision given, decree or sentence passed or order made by the Chief of Amb or the Khan of Phulera, as the case may be, in the exercise of any of the powers conferred upon them respectively, by the Regulation. In exercise of such power of revision the Local Government may, in any proceeding, pass any order which such Chief or Khan might have passed under the Regulation.³

Revision.

The Local Government may, by rule, confer such power of revision as it may deem fit upon the Commissioner of the Peshawar Division and the Deputy Commissioner of the Hazara District respectively.⁴

In the event of any difference or dispute at any time arising as to the limits of Upper Tanawal or of Phulera or of any part thereof, the Deputy Commissioner of Hazara may define such limits or any part thereof. An appeal lies from such order to the Commissioner of the Peshawar Division, whose decision is final.⁵

Definition of boundaries.

As to the power of the Local Government to make rules to carry out all or any of the purposes and objects of the Regulations, see section 10 of the Regulation.

Power of Local Government to make rules.

Agror Valley.

By the Agror Valley Regulation, 1891, special provision has been made for the better administration of the Agror Valley dealing with the rights forfeited by the Khan of Agror. The Chief Commissioner of the North-West Frontier Province appoints an officer to deal with such rights.⁶

¹ Reg. II of 1900, s. 6 (1).

² *Ibid.* s. 7.

³ *Ibid.* s. 8 (1).

⁴ Reg. II of 1900, s. 8 (2).

⁵ *Ibid.* s. 9.

⁶ Reg. IV of 1891, s. 5.

Exclusive
jurisdiction.

No Court or Revenue Officer can take cognizance of the manner in which the Governor-General in Council or the Chief Commissioner or any such officer may exercise his powers vested by this Regulation.¹

¹ Reg. IV of 1891, s. 11.

CHAPTER XXI.

ODDH CIVIL COURTS.

THE Oudh Civil Courts Act, 1879¹ (with its amendments), contains the following :—

“Section 4. Besides the Courts established under any other enactment for the time being in force, there shall be ^{Grades of Courts.} four grades of Civil Courts in Oudh (namely) :—

- (1) the Court of the Munsif;
- (2) the Court of the Subordinate Judge;
- (3) the Court of the District Judge;
- (4) the Court of the Judicial Commissioner.

“Section 5. The number of District Judges, Subordinate ^{Number of Judges.} Judges, and Munsifs shall be fixed, and may from time to time be altered, by the Local Government.

“Section 6.² The Judicial Commissioner, the District ^{Appointment of Judges.} Judges, Subordinate Judges, and Munsifs shall be appointed by the Local Government.

“Section 7. When the business pending before any ^{Additional Judges.} District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner, appoint such Additional Judges as may be requisite.

“Such Additional Judges shall perform any of the duties of a Judge under chapter iii³ of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.⁴

“Section 8. In the event of the death of a District Judge, ^{Temporary charge of office of District Judge.} or of his being incapacitated by illness or otherwise for the

¹ Act XIII of 1879.

² As amended by Act XXXVIII of 1920, Sch. I.

³ I.e. the general jurisdiction, *post*,

pp. 239–241.

⁴ As amended by Act IV of 1914, Sch., Part I.

performance of his duties, or of his absence from the station at which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the Subordinate Judge holding his Court at the same place, shall, without relinquishing his ordinary duties, assume charge of the Judge's office at such station; and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions; and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

Transfer of proceedings on death, etc., of Subordinate Judge.

"Section 9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him, the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

"All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred."

Additional Judicial Commissioners.

The Local Government may appoint three or more persons to be Additional Judicial Commissioners, and to exercise jurisdiction as such in the Court of the Judicial Commissioner of Oudh.¹

Every person so appointed shall hold his office during the pleasure of the Local Government.

On the occurrence of a vacancy in the office of Judicial Commissioner or of an Additional Judicial Commissioner, or during the absence of the Judicial Commissioner or of an Additional Judicial Commissioner, the Local Government may, by a notification in the official Gazette, appoint such person as it thinks fit to act as Judicial Commissioner or as Additional Judicial Commissioner. And the person so appointed may exercise jurisdiction as Judicial Commissioner or an Additional Judicial Commissioner until some person has been appointed to fill the vacancy under section 6 of the Oudh Civil Courts Act, 1879, or under this section, and has entered on the discharge of the duties of his office, or

¹ U. P. Act II of 1917, s. 2, as Sch. I.
amended by Act XXXVIII of 1920,

until the absent Judicial Commissioner or Additional Judicial Commissioner has returned from his absence and has resumed charge of the duties of his office, or until the Local Government sees fit to cancel his appointment, as the case may be.¹

Subject to the other provisions of the Oudh Courts Act, 1891, an Additional Judicial Commissioner shall exercise the same jurisdiction as the Judicial Commissioner may exercise under any enactment for the time being in force, but only in such cases as the Judicial Commissioner may direct.²

Jurisdiction of Additional Judicial Commissioner and distribution of business.

The Judicial Commissioner may, from time to time, transfer any case with respect to which he may have directed an Additional Judicial Commissioner to exercise jurisdiction, and of which the hearing before such Additional Judicial Commissioner has not commenced, for hearing and disposal to his own file or to the file of another Additional Judicial Commissioner (if any).³

Subject to the other provisions of Act XIV of 1891, every enactment for the time being applicable to the Judicial Commissioner shall apply to an Additional Judicial Commissioner when exercising any jurisdiction under the last foregoing section as if he were the Judicial Commissioner.⁴

Where this Act or any other enactment for the time being in force requires a case to be heard by a bench of two Judges of the Court of the Judicial Commissioner of Oudh, and that Court for the time being consists of three or more Judges,⁵ the Judicial Commissioner shall, from time to time, determine what two Judges shall constitute such bench.⁶

Any of the following proceedings, namely :—

- (a) an appeal from an original decree or order of a District Judge or Additional Judge,
- (b) an appeal which, under section 18, sub-section (1), of the Oudh Civil Courts Act, 1879,⁷ as amended by the North-Western Provinces and Oudh Act, 1890,⁸ lies from a decree or order of a Subordinate Judge to the Judicial Commissioner,

Hearing of cases by a bench.

¹ U. P. Act II of 1917, s. 2; Act XIV of 1891, s. 4 (2).

² Act XVI of 1897, s. 8; Act XIV of 1891, s. 5.

³ Act XIV of 1891, s. 5 (2), as amended by U. P. Act II of 1917, s. 3 (1).

⁴ Act XIV of 1891, s. 6, as amended by Act XVI of 1897, s. 4.

⁵ U. P. Act II of 1917, s. 3 (2), amending Act XIV of 1891, s. 5 (3).

⁶ Act XVI of 1897, s. 3.

⁷ Act XIII of 1879.

⁸ Act XX of 1890.

- (c) any other appeal, or any application or other matter, with respect to which appeal, or application or other matter, the Judicial Commissioner or an Additional Judicial Commissioner, as the case may be, before whom it is pending has certified under his hand that it should in his opinion be heard by two Judges,

shall be heard by a bench consisting of two Judges of the Court of the Judicial Commissioner sitting together.¹

Provided, with respect to clauses (a) and (b), as follows namely :—

- (i) that the amount or value of the subject-matter of the suit in the Court of first instance was ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to the Judicial Commissioner is the same sum or upwards, or
- (ii) that the decree or order appealed from involves, directly or indirectly, some claim or question to, or respecting, property of like amount or value.²

Rules in case
of difference.

If the Court of the Judicial Commissioner of Oudh for the time being consists of only two Judges, and in any civil case before the Judicial Commissioner and the Additional Judicial Commissioner sitting together,³ a difference of opinion arises, the following rules shall be observed :—

- (a) If the case is a civil case, then, unless the Judicial Commissioner and the Additional Judicial Commissioner concur in a decision reversing or varying the decree or order under their consideration, such decree or order shall be upheld :

Provided that if the difference of opinion is on a question of law or of custom having the force of law, or as to the construction of any document or the admissibility of any evidence, and either the Judicial Commissioner or the Additional Judicial Commissioner is of opinion that the question should be referred to the High Court at Allahabad,⁴ the Judicial Commissioner and the Additional Judicial Commissioner shall jointly state the question and

¹ See *Ganga Baksh Singh v. Dalip Singh* (1901), 28 I. A., 181; 24 All., 13; 5 C. W. N., 781.

by Act XVI of 1897, s. 6.

² *Ante*, p. 237.

⁴ Act XIV of 1891, s. 3.

³ Act XIV of 1891, s. 8, as amended

forward such statement, with their respective opinions on the question, to the High Court.¹

On receiving such statement, the High Court, by a bench constituted by two or more Judges as the Chief Justice may determine, shall decide the question referred therein and transmit to the Judicial Commissioner a copy of its judgment under the signature of its Registrar, and the Judicial Commissioner and the Additional Judicial Commissioner sitting together shall, on receipt of the copy, proceed to dispose of the case in conformity with the decision of the High Court.

Procedure on reference under last foregoing section.

When the Judges differ as to the decision of any such question, the decision shall be—

- (a) if there is a majority of the Judges, the decision of the majority, and
- (b) if the Judges are equally divided, the decision of the senior Judge.²

The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends. The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.³

Principal Civil Court of original jurisdiction. Control over Civil Courts.

The Local Government shall, by notification in the official Gazette,⁴ fix, and may by like notification from time to time vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Power to fix local limits of jurisdiction.

Subject to the provisions of the Code of Civil Procedure, section fifteen,⁵ and of any other enactment for the time being in force—

- (a) the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts;
- (b) the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees; and
- (c) the jurisdiction of a Munsif extends to all suits in

Original jurisdiction of District Judge; of Subordinate Judge;

¹ Act XIV of 1891, s. 9, as amended by Act XVI of 1897, s. 7.

² Act XIV of 1891, s. 10.

³ Act XIII of 1879, s. 10.

⁴ *Ibid.* s. 16.

⁵ This is now s. 15 of Act V of 1908, which is as follows: "Every suit shall be instituted in the Court of the lowest grade competent to try it."

which such amount or value does not exceed one thousand rupees.¹

The Judicial Commissioner² may, from time to time, direct, by notification in the official Gazette—

(a) with respect to any Munsif named therein, that his jurisdiction shall extend, subject as aforesaid, to all suits of such value, not exceeding two thousand rupees, as may be specified in the notification ;³

(b) with respect to any Subordinate Judge named therein, that his jurisdiction shall extend, subject as aforesaid, to all original suits cognizable by the Civil Courts,

and may by like notification withdraw such jurisdiction.

Appeals from
decrees and
orders of Sub-
ordinate
Judges and
Munsifs.

An appeal from a decree or order of a Subordinate Judge in an original suit or proceeding shall, when an appeal is allowed by law, lie—

(a) to the District Judge where the value of the suit in which, or in any proceeding arising out of which, the decree or order was made did not exceed five thousand rupees, and

(b) to the Judicial Commissioner in any other case.⁴

An appeal from a decree or order of a Munsif shall, when an appeal is allowed by law, lie to the District Judge.⁵

The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, direct by notification in the official Gazette, that appeals from all or any of the decrees or orders of any Munsif shall be preferred to such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.⁶

When appeals are so preferred the Subordinate Judge may dispose of them.⁷

Power to refer
to Subordinate
Judge appeals
from Munsifs.

Every District Judge may from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs ; and such

¹ Act XIII of 1879, s. 17.

² *Ibid.* s. 16. See Act IV of 1914, Sch.

³ Substituted by Act XX of 1890, s. 39.

⁴ *Ibid.* s. 40. See *ante*, pp. 238, 239, as to the cases where the Judicial Commissioner and the Additional

Judicial Commissioner sit together to hear appeals.

⁵ Substituted for s. 18 of Act XIII of 1879 by Act XX of 1890, s. 40.

⁶ *Ibid.*

⁷ See *Sheo Harakh v. Ramchandra* (1914), 37 All., 76.

Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.¹

Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.²

Appeals from District and Additional Judges.

No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Presiding officer of Court not to try suit, etc., in which he is interested.

When any such suit, appeal, or proceeding comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

Mode of disposing of such suit, etc.

The superior Court shall thereupon dispose of the case in the manner prescribed by section twenty-four of the Code of Civil Procedure.³

* In the event of an appeal being preferred from a judgment or order passed by a Judicial Commissioner or an Additional Judicial Commissioner in any other capacity, or in which he has any personal interest, the case shall be heard by the Additional Judicial Commissioner, or the Judicial Commissioner as the case may be.*⁴

The Judicial Commissioner⁵ may invest, within such local limits as he from time to time fixes, any District Judge, Additional Judge, or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of two hundred and fifty rupees,⁶ and may, whenever he thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.⁷

Small Cause Court jurisdiction.

¹ Act XIII of 1879, s. 19.

² Act XIII of 1879, s. 20.

³ Act V of 1908, *post*, pp. 320, 321.

⁴ *-* Act XIV of 1891, s. 11 (3).

⁵ Act IV of 1914, Sch., Part I.

⁶ U. P. Act II of 1912, s. 2.

⁷ Act XIII of 1879, s. 24, as

amended by Act IV of 1914, Sch., Part I. This section does not apply to Honorary Munsifs and Benches: see United Provinces Honorary Munsifs Act, 1896 (U. P. Act II of 1896), s. 13, *ante*, p. 135.

Jurisdiction
under Divorce
Act.

For the purposes of the Indian Divorce Act,¹ the District Judge² shall, throughout the said territories to which this Act applies, be deemed to be the Commissioner of the Division.³

There is no appeal to the Allahabad High Court from a decree for dissolution of marriage made by a District Court in Oudh.⁴

Local limits of
jurisdiction.

The Local Government may fix and vary the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under the Oudh Civil Courts Act, 1879.⁵

Law applicable
to Additional
Judicial
Commissioner.

Every enactment for the time being applicable to the Judicial Commissioner applies to an Additional Judicial Commissioner.⁶

Suspension and
removal of
Judicial
Commissioner.

The Judicial Commissioner may, with the previous sanction of the Governor-General in Council, be suspended or removed by the Local Government.⁷

Subordinate
judicial
officers.

Any District Judge, Additional Judge, Subordinate Judge, or Munsif may be suspended or removed by the Local Government.⁸

Subordinate
Judge or
Munsif.

The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.⁹

Suspension of
Munsif by
District Judge.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.¹⁰

As to the laws in force in Oudh, see the Oudh Laws Act, 1876,¹¹ and the Acts amending it.

As to Village Courts, see *ante*, pp. 186, 187.

¹ IX of 1869.

² Act XX of 1890, s. 42.

³ Act XIII of 1879, s. 28.

⁴ *Percy v. Percy* (1896), 18 All., 375, overruling *Morgan v. Morgan* (1889), 4 All., 306.

⁵ Act XIII of 1879, s. 16.

⁶ Act XIV of 1891, s. 6, as amended by Act XVI of 1897, s. 4.

⁷ Act XIII of 1879, s. 28.

⁸ *Ibid.* s. 29.

⁹ *Ibid.* s. 30.

¹⁰ *Ibid.* s. 31.

¹¹ Act XVIII of 1876.

CHAPTER XXII.

PUNJAB.

THE constitution and jurisdiction of the Subordinate Civil Courts in the Punjab are to be found in the Punjab Courts Act, 1918,¹ as amended by the Punjab Courts Amendment Act., 1919² and 1922,³ and supplemented by the Punjab Courts (Supplementing) Act, 1919.⁴

The Act extends to the Punjab, and as so amended is as Extent of Act. follows :

“Section 18.⁵ Besides the High Court⁶ the Courts of Classes of Courts. Small Causes established under the Provincial Small Causes Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :—

- (1) the Court of the District Judge ;
- (2) the Court of the Additional Judge ; and
- (3) the Court of the Subordinate Judge.

“Section 19.—(1) For the purposes of this Part the Local Civil districts. Government shall divide the territories under its administration into civil districts.

“(2) The Local Government may alter the limits or the number of these districts.

“Section 20. The Local Government shall appoint as District Judges. many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district :

“Provided that the same person may, if the Local Government thinks fit, be appointed to be District Judge of two or more districts.

¹ Punj. Act VI of 1918.

² Punj. Act IV of 1919.

³ Punj. Act IX of 1922.

⁴ Act IX of 1919.

⁵ As amended by Punj. Act IX of 1922, s. 3.

⁶ Punj. Act IV of 1919, s. 2 (2).
Ante, chap. vi.

Additional
Judges.

"Section 21.—(1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Local Government may appoint such Additional Judges as may be necessary.

"(2) An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.¹

Subordinate
Judges.

"Section 22.²—(1) The Local Government may, after consultation with the High Court, fix the number of Subordinate Judges to be appointed, and when there is a vacancy in that number may, subject to the rules, if any, made under subsection (2), appoint such person as is nominated by the High Court to the said vacancy.

"(2) The Local Government may, after consultation with the High Court, make rules as to the qualifications of persons to be appointed Subordinate Judges."

District Court
to be principal
Civil Court of
original
jurisdiction.

Original juris-
diction of
District Judge
in suits.

"Section 24. The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

"Section 25. Except as otherwise provided by any enactment for the time being in force, the Court of the District Judge shall have jurisdiction in original civil suits without limit as regards the value.

Pecuniary
limits of juris-
diction of
Subordinate
Judges.

"Section 26.³ The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge shall be determined by the High Court either by including him in a class or otherwise as it thinks fit.

Local limits of
jurisdiction.

"Section 27.⁴—(1) The local limits of the jurisdiction of a Subordinate Judge shall be such as the High Court may define.

"(2) When the High Court posts a Subordinate Judge to a district, the local limits of the district shall, in the absence of any direction to the contrary, be deemed to be the local limits of his jurisdiction.

¹ Cf. *Behari Lal v. Kundan Lal* 1922, s. 4.
(1922), P. C., 28/7/22.

² *Ibid.* s. 6.

³ As amended by Punj. Act IX of

⁴ *Ibid.* s. 7.

"Section 28.¹—(1) The Local Government may, after consultation with the High Court, appoint any person to be an Honorary Subordinate Judge, and the High Court may confer on such Judge all or any of the powers conferable under this Act on a Subordinate Judge with respect to particular classes of suits, or with respect to suits generally in any local area.

Special Judges
and Benches.

"(2) The Local Government may direct any uneven number of persons invested with powers of the same description and exercisable within the same local area under this section to sit together as a bench; and those powers shall, while the direction remains in force, be exercised by the bench so constituted, and not otherwise.

"(3) The decision of the majority of the members of a bench constituted under this section shall be deemed to be the decision of the bench.

"(4) "Persons on whom powers are conferred under this section and the benches constituted under this section shall be deemed, for the purposes of this Part, to be Subordinate Judges.

"Section 29.² The High Court may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887,³ for the trial of suits cognizable by such Courts up to such value not exceeding five hundred rupees as it thinks fit, and may withdraw any jurisdiction so conferred.

Power to
invest Subor-
dinate Judge
with Small
Cause Court
jurisdiction.

"Section 30.—(1) The High Court may by general or special order authorise any Subordinate Judge to take cognizance of, or any District Judge to transfer to a Subordinate Judge under his control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in such order.

Exercise by
Subordinate
Judge of
jurisdiction of
District Court,
in certain
proceedings.

"(2) The proceedings referred to in sub-section (1) are the following, namely:—

- (a) Proceedings under the Indian Succession Act, 1865,⁴ and the Probate and Administration Act, 1881,⁵ which cannot be disposed of by a District Delegate.

¹ As amended by Punj. Act IX of 1922, s. 8.

² *Ibid.* s. 9.

³ Act IX of 1887.

⁴ Act X of 1865.

⁵ Act V of 1881.

(b) Proceedings under the Guardians and Wards Act, 1890.¹

"(3) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

"(4) Proceedings taken cognizance of by or transferred to a Subordinate Judge as the case may be under this section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge.

Place of sitting
of Court.

"Section 31.²—(1) The High Court may fix the place or places at which any Court under this Part is to be held.

"(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

"(3) Except as may be otherwise provided by any order under this section, a Court under this part may be held at any place within the local limits of its jurisdiction.

Suspension
and removal.

"Section 32.³—(1) Any District Judge may be suspended or removed from office by the Local Government.

"(2) Any Subordinate Judge may be suspended from office by the High Court subject to the confirmation of the Local Government, and removed from office by the Local Government on the report of the High Court.

Control of
Courts.
Power to
distribute
business.

"Section 33. Subject to the general superintendence and control of the High Court, the District Judge shall have control over all the Civil Courts under this Part within the local limits of his jurisdiction.

"Section 34. Notwithstanding anything contained in the Code of Civil Procedure, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:

"Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction."

Delegation
of District
Judge's powers.

"Section 37.⁴ A District Court may, with the previous sanction of the High Court, delegate to any Subordinate

¹ Act VIII of 1890.

² *Ibid.* s. 11.

³ As Amended by Punj. Act IX of 1922, s. 10.

⁴ *Ibid.* s. 13.

Judge in the district the power conferred on a District Court by sections 33, 34 and 35 of this Part and section 24 of the Code of Civil Procedure,¹ to be exercised by the Subordinate Judge in any specified portion of the districts, subject to the control of the District Court.

“Section 38.—(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge exercising original jurisdiction shall lie to the High Court. Appeals from District Judge or Additional Judges.

“(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

“Section 39.²—(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie— Appeals from Subordinate Judges.

(a) to the District Judge where the value of the original suit in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.

“(2) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

“(3) The High Court may by notification direct that appeals lying to the District Court from all or any of the decrees or orders passed in an original suit by any Subordinate Judge shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such other Subordinate Judge shall be deemed to be a District Court for the purposes of all appeals so preferred.

“Section 40.³—(1) A District Judge may transfer any appeals pending before him from the decrees or orders of Subordinate Judges to any other Subordinate Judge under his administrative control competent to dispose of them. Power to transfer appeals to Subordinate Judges.

“(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

¹ Act V of 1908.

1922, s. 15.

² As amended by Punj. Act IX of

³ *Ibid.* s. 15.

"(8) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

"(4) The powers conferred by this section shall be exercised subject to such general or special orders as may from time to time be issued in this behalf by the High Court.

Second appeal. "Section 41.—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely,—

- (a) the decision being contrary to law or to some custom or usage having the force of law;
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908, or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

"(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

"(3) Notwithstanding anything in sub-section (1) of this section, no appeal shall lie to the High Court from a decree passed in appeal by any Court subordinate to the High Court regarding the validity or the existence of any custom or usage unless the Judge of the Lower Appellate Court has certified that the custom or usage is of sufficient importance, and that the evidence regarding it is so conflicting or uncertain that there is such substantial doubt regarding its validity or existence as to justify such appeal :¹

Second appeal on no other ground.

"Section 42.—(1) No second appeal shall lie except on the grounds mentioned in section 41.

No second appeal in certain suits.

"(2) No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees."

Revision.

"Section 44. The High Court may call for the record of any case which has been decided by any Court subordinate to it and in which no appeal lies thereto, and if such subordinate Court appears—

¹ *Ram Rakhi v. Mela Ram* (1921), 2 Lahore, 167.

- (a) to have exercised a jurisdiction not vested in it by law;
or
- (b) to have failed to exercise a jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally
or with material irregularity;

the High Court may make such order in the case as it thinks fit.¹

"Section 45.² Except as otherwise provided by this Part, any powers that may be conferred by the High Court on any person under this Part may be conferred on such person either by name or by virtue of office. Mode of appointment and conferring powers.

"Section 46.³ Whenever any person holding an office in the service of Government who has been invested with any powers under this Part throughout any local area is transferred or posted at any subsequent time to an equal or higher office of the same nature within a like local area he shall, unless the High Court otherwise directs or has otherwise directed, exercise the same powers in the local area to which he is so transferred or posted." Continuance of powers of officers.

As to the law in force in the Punjab, see Punjab Laws Acts IV of 1872,⁴ XV of 1875, and XXIV of 1881, and Punjab Acts VII of 1895, and I of 1910.

By section 76 of the Punjab District Rates Act, 1888,⁵ suits for the recovery from co-sharers, tenants, or others of any sum on account of any rate or tax imposed under that Act, and suits on account of illegal exaction of any such rate or tax, or for settlement of accounts connected therewith shall, unless the Local Government otherwise directs, be cognizable by the Courts which for the time being have cognizance of suits for rent due on land. Punjab District Rates.

Village Panchayats.

The Village Panchayat Act, 1922,⁶ provides for Panchayats⁷ in the Punjab.

Its provisions with regard to constitution, establishment,

¹ Cf. *post*, pp. 854, 855.

² As amended by Punj. Act IX of 1922, s. 16.

³ *Ibid.* s. 17.

⁴ Ss. 23-32, dealing with Insolvency, were repealed by Act III of 1907,

s. 54, Sch.

⁵ Act XX of 1888.

⁶ Punj. Act III of 1922.

⁷ Lit. a court of arbitration consisting of five or more members.

meetings, and jurisdiction are similar to those to be found in the United Provinces Village Panchayat Act, 1920.¹

As to amendments to this Act, see Punjab Village Panchayat Act (Amendment) Act, 1922.²

Delhi.

By a proclamation dated September 17th, 1912, the new Province of Delhi was created, and provision was made for its administration by a Chief Commissioner ; and by a proclamation dated February 22nd, 1915, further territory was added to such new Province.

See Delhi Laws Acts, 1912,³ and 1915.⁴

¹ *Ante*, pp. 186, 188.

² Punj. Act X of 1922.

³ Act XIII of 1912.

⁴ Act VII of 1915, as amended by Act XVIII of 1919.

CHAPTER XXIII.

SINDH.

THE High Court of Bombay has no jurisdiction over the Province of Sindh.¹

Bar of jurisdiction of Bombay High Court.

This does not affect the Administrator-General's Act (III of 1918),² or invalidate grants of Probate or Letters of Administration made by such High Court.³

The Civil Courts of the Province of Sindh are constituted by Bombay Act XII of 1866, as amended by Bombay Acts I of 1906, I of 1910, and II of 1916.

The Court of the Judicial Commissioner is the highest Court of appeal in civil matters in the Province and is the District Court of Karachi. It consists of three or more Judges,⁴ one of whom is the Judicial Commissioner, and the others Additional Judicial Commissioners. One of the Additional Judicial Commissioners must be a barrister of not less than five years' standing.⁵

Court of Judicial Commissioner.

The Judicial Commissioner and Additional Judicial Commissioners are appointed by the Local Government, by whom alone they are liable to be suspended or removed. Within the district of Karachi each of them exercises all the jurisdiction and has all the powers of a Judge of a District Court.⁶

Appointment and removal.

There is in each district a District Court, presided over (save as provided)⁷ by a Judge appointed by the Local Government⁸ by which only he is liable to be suspended or removed.⁹

District Courts.

The District Court is, within the meaning of the Code

Jurisdiction of District Court.

¹ Act V of 1872, s. 1.

² *Ibid.* s. 2, added by Act XX of 1872, s. 1.

³ *Ibid.* s. 8, added by Act XX of 1872, s. 1.

⁴ Act XXXVIII of 1920, Sch. I.

Bom. Act I of 1906, s. 2.

S. 1A of Bom. Act I of 1866; added by Bom. Act I of 1906, s. 2.

Bom. Act I of 1906, s. 8.

Bom. Act I of 1910, Sch. I (29).

Bom. Act XII of 1866, s. 2.

of Civil Procedure,¹ the principal Court of original jurisdiction in the district.²

The District Court of Karachi is a Colonial Court of Admiralty.³

Subordinate
Civil Courts.

There are in each district as many Subordinate Civil Courts as the Local Government,⁴ acting under the general control of the Government of India⁵ from time to time directs. Every such Court is a subordinate Court of original civil jurisdiction within such limits as the Commissioner in Sindh, with the sanction of the Local Government, may from time to time determine, and is presided over by a Judge appointed by the Commissioner in Sindh.⁶

Jurisdiction of
Subordinate
Civil Court.

The jurisdiction of every such subordinate Court extends to all suits and proceedings of a civil nature wherein the value or subject-matter of the claim does not exceed five thousand rupees.⁷

Appeals.

A regular appeal⁸ lies from the decisions of a District Judge in the exercise of his original civil jurisdiction to the Court of the Judicial Commissioner,⁹ whenever such appeal is allowable under the Code of Civil Procedure¹⁰ or under any other law for the time being in force in Sindh.¹¹

A regular appeal⁸ lies from the decision of a Judge of a subordinate Court to the District Court of the district within which such subordinate Court is situated, wherever such appeal is allowable under the Code of Civil Procedure,¹² or under any other law for the time being in force in Sindh.¹³

Suspension and
removal of
Judge of Sub-
ordinate Court.

The Commissioner in Sindh may suspend or remove from office for misbehaviour or neglect of duty any Judge of a subordinate Court. The Judicial Commissioner may suspend such Judge from office pending an inquiry into such conduct.

Any District Judge may, wherever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But when he does so he must immediately report the case to the Court of the Judicial Commissioner.¹⁴

Rules.

As to the power of the Judicial Commissioner to make rules, see section 9A, added to Bombay Act XII of 1866 by Bombay Act I of 1906, section 6.

¹ Act V of 1908, s. 2 (4).

² Bom. Act XII of 1866, s. 8.

³ Act XVI of 1891, s. 2.

⁴ Bom. Act I of 1906, s. 9.

⁵ See Bom. Act I of 1910, Sch. I.

⁶ Bom. Act XII of 1866, s. 4.

⁷ *Ibid.* s. 5.

⁸ I.e. on the law or facts or both.

⁹ Bom. Act I of 1906, s. 9.

¹⁰ Act V of 1908, *post*, pp. 334, 335.

¹¹ Bom. Act XII of 1866, s. 6.

¹² Act V. of 1908, *post*, pp. 334, 335.

¹³ Bom. Act XII of 1866, s. 8.

¹⁴ Bom. Act I of 1906, s. 5.

Section 98 of the Code of Civil Procedure¹ does not apply to the Court of the Judicial Commissioner. In that Court where any appeal is heard by a bench of two or more Judges the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges. Difference of opinion.

Where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed :

Provided that, where the Bench hearing the appeal is composed of two Judges and the Judges composing the Bench differ in opinion as to the decision, then the appeal may, in the discretion of the Judicial Commissioner, be either referred to a third Judge or reheard by a Bench of at least three Judges. Where the appeal is so referred or reheard, it shall be decided according to the opinion of the majority, if any, of the Judges who have heard it, or where there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.²

A Judge of the Court of the Judicial Commissioner when sitting in a Bench of three or more Judges can try any appeal against a judgment decree or order passed by himself . . . judgment. When Judge can try appeal against his own judgment. in a civil . . . matter, and can adjudicate upon any proceeding connected with, or arising out of, such judgment decree or order.³

As to the power of the Judicial Commissioner to appoint, dismiss, and suspend officials of the Court, see Bombay Act I of 1906, s. 7.⁴ Appointment of officers.

The Court of the Judicial Commissioner has general control over all Courts which are subject to its appellate jurisdiction.⁵ Control of Subordinate Courts.

The Court of the Judicial Commissioner may, with the sanction of the Local Government, make rules for the due exercise by the District Judges of the general control vested in them over all Civil Courts within their respective districts, and for the visitation and inspection of such Courts by the District Judges or their assistants.⁶ Control by District Judge.

Sindh is a Scheduled District.⁷

Law administered.

¹ Act V of 1908, *post*, p. 342.

² S. 9b, added to Bom. Act XII of 1866 by Bom. Act I of 1906, s. 6.

³ *Ibid.*

⁴ Act I (Bo. C.) of 1906, s. 7.

⁵ S. 15a, added to Bom. Act XII of

1866 by Bom. Act I of 1906, s. 8.

⁶ S. 9a, added by Bom. Act I of 1906, s. 6.

⁷ Acts XIV of 1874, s. 1, Sch. I, Pt. II, and XV of 1874, s. 2, Sch. VI, Pt. II.

**Thar and
Parker.**

By section 12 of Bombay Act XII of 1866 nothing in that Act applies to that portion of the Province of Sindh which was then in charge of the Political Superintendent of Thar and Parker. By section 21 of Bombay Act I of 1906 the Local Government may alter or rescind any of the then existing rules for the administration of justice in that part of the Province, or extend all or any of the provisions of the Act to the whole or to any part of such part of the Province.

**Delegation of
officers.**

As to the power of the Governor of Bombay in Council to delegate his powers as the Local Government of the Province of Sindh to the Commissioner in Sindh, see Act V of 1868.

**Mamlatdars'
Courts.**

The Court of the Judicial Commissioner of Sindh may exercise over Mamlatdars' Courts in the Province of Sindh the powers exercised by the High Court of Bombay¹ over Mamlatdars' Courts in other parts of the Bombay Presidency.²

¹ *Ante*, p. 156.

ante, pp. 154-157.

² Bom. Act II of 1906, s. 24. See

CHAPTER XXIV.

SMALL CAUSE COURTS IN PRESIDENCY TOWNS.

THE Presidency Small Cause Courts Act, 1882,¹ as amended, contains the following provisions :—

“Section 5. There shall be in each of the towns of Calcutta, Madras, and Bombay, a Court, to be called the Court of Small Causes of Calcutta, Madras, or Bombay, as the case may be. Courts of Small Causes established.

“Section 6.² The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be, within the meaning of the Letters-Patent, respectively dated the 28th day of December, 1865, for such High Courts,³ and within the meaning of the Code of Civil Procedure, and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879,⁴ and the High Court shall have in respect of the Small Cause Court the same powers as it has under 5, 6 George V. c. 61, s. 107,⁵ in respect of Courts subject to its appellate jurisdiction.” Court to be deemed under superintendence, etc., of High Court.

As to the revision of Small Cause Court decrees by the High Court, see *post*, pp. 263, 264.

“Section 7.⁶ The Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges of the Small Cause Court : Appointment, suspension, and removal of Judges.

“Provided that—

- (1) No person shall be appointed to be Chief Judge of a Small Cause Court unless he is—

¹ Act XV of 1882.

² As amended by Act I of 1895, s. 2.

³ *Ante*, chap. iii.

⁴ Act XVIII. of 1879.

⁵ *Ante*, p. 27.

⁶ As amended by Acts XXIII of 1917, s. 2, and XXXVIII of 1920, Sch. I.

(a) an Advocate of a High Court of Judicature established under the Indian High Court Act, 1861,¹ or the Government of India Act, 1915,² or

(b) a vakil or attorney of one of the said High Courts.

(2) No person shall be appointed to be a Judge of a Small Cause Court unless he is—

(a) an advocate, vakil, or attorney of one of the said High Courts, or

(b) a Judge of a Court of Civil Judicature of not less than 5 years' standing; and

(8) of the persons so appointed to be Judges, including the Chief Judge, not less than one-third shall be advocates of one of the said High Courts.

"The Local Government may, by a like notification, suspend and remove any Judge so appointed.

Rank and
precedence of
Judges.

"Section 8. The Chief Judge shall be the first of the Judges in rank and precedence.

"The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Performance of
duties of
absent Judge.

"Section 8A.³—(1) During any absence of the Chief Judge or any Judge of the Court, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be.

"(2) Every person so appointed shall be authorised to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge or of the Judge acting as Chief Judge, or until the Local Government see cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

Registrar.

"Section 9.—(1) The High Court may by rule (aa)⁴ empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters; and (b) cancel or vary any such rule or rules.

"The High Court may by rules provide for the exercise by one or more of the Judges of the Small Cause Court of any

¹ 24, 25 Vict. c. 104.

² 5, 6 Geo. V. c. 61.

³ Act III of 1899, s. 8.

⁴ *Ibid.* s. 4.

powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.¹

"Section 10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof. Chief Judge to distribute business of Court.

"Section 11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and, if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice."² Procedure in case of difference of opinion.

"Section 13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court."³ Appointment of Registrar and ministerial officers.

As to the appointment of a Deputy Registrar and of other ministerial officers, and the removal of the Registrar and other ministerial officers, see Act XV of 1882, s. 13, as amended by Act III of 1899, s. 5.

"Section 14. The Local Government may invest the Registrar with the powers of a Judge under the Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try,⁴ or an application for the recovery of possession of immovable property."⁵ Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

"Section 16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original jurisdiction."⁶ Law administered.

"Section 17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court."⁷ Local limits of jurisdiction of Court.

¹ Act I of 1895, s. 5.

² As to a difference of opinion on a question of law, see s. 69, *post*, pp. 266, 267.

³ As amended by s. 5 of Act III

T. C. J. I.

of 1899.

⁴ Cf. *ante*, p. 67.

⁵ Act I of 1895, s. 6.

⁶ See *ante*, pp. 22, 59, 60.

⁷ See *ante*, pp. 37, 38.

Suits in which
Court has
jurisdiction.

"Section 18. Subject to the exceptions in section 19,¹ the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

"When the amount or value of the subject-matter does not exceed two thousand rupees; and

- (a) the cause of action² has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court³ has, for reasons to be recorded by it in writing, been given before the institution of the suit; or
- (b) all the defendants at the time of the institution of the suit, actually and voluntarily reside,⁴ or carry on business,⁵ or personally work for gain,⁶ within such local limits; or
- (c) any of the defendants, at the time of the institution of the suit actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit,⁷ or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

"Provided⁷ that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal."

A Judge in granting or refusing leave must exercise his discretion.⁸

As to the grant of leave, cf. *ante*, p. 47.

A foreigner carrying on business in a Presidency Town can be sued in the Small Cause Court.⁹

Set-off.

"*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties,¹⁰ reduced to a balance

¹ *Post*, pp. 259, 260.

² As to what is a "cause of action," see *ante*, pp. 44, 45. As to splitting causes of action and as to relinquishment of portion of claim, see Act V of 1908, Sch. I, Ord. II, r. 2.

³ A rule allowing the Registrar to give such leave is *ultra vires*: *Rajam Chetti v. Seshayya* (1895), 18 Mad., 286. Cf. *Laliteshwar Singh v. Rameshwar Singh* (1907), 34 Cal., 619; 11 C. W. N., 649; *ante*, pp. 48, 87, 82.

⁴ Cf. *ante*, pp. 45, 46.

⁵ Cf. *ante*, p. 46.

⁶ Cf. *ante*, pp. 89, 46.

⁷ Added by Act I of 1895, s. 7.

⁸ *Collett v. Armstrong* (1887), 14 Cal., 526.

⁹ *Girdhar Damodhar v. Kassigar Hiragar* (1898), 17 Bom., 662. Cf. *Rambhat v. Shankar Baswant* (1901), 25 Bom., 528; 8 Bom. L. R., 82.

¹⁰ See *Ramdeo v. Pokhram* (1898), 21 Cal., 419.

not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit."

A set-off which the Court has no jurisdiction to try cannot be given effect to.¹

"*Explanation II.*—Where a person has a permanent Residence dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging."

All suits cognizable by the Court of Small Causes at Madras whereof Madras. the amount or value of the subject-matter exceeds one thousand rupees may at the election of the plaintiff be instituted in the Madras City Civil Court.²

"*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

The jurisdiction of the Small Cause Court is not affected by the Army Act, 1881 (44, 45 Vict. c. 58),³ as amended by 51 Vict. c. 4, s. 7.⁴

As to the abandonment of a suit against a defendant residing out of the jurisdiction, see section 18A, added by section 8 of Act I of 1895.

"Section 19. The Small Cause Court shall have no jurisdiction in—

- (a) suits concerning the assessment or collection of the Revenue. Suits in which Court has no jurisdiction.
- (b) suits concerning any act ordered or done by the Governor-General in Council or the Local Government, or by the Governor-General or a Governor, or by any Member of the Council of the Governor-General or of the Governor of Madras, Bombay, or Fort William in Bengal,⁵ in his official capacity, or by any person by order of the Governor-General in Council or the Local Government; Governor-General, etc.
- (c) suits concerning any act ordered or done by any Judge Judge, etc. or judicial officer in the execution of his office, or by

¹ *Brojendra Nath Das v. Budge Budge Jute Mill Company* (1898), 20 Calc., 527.

² Mad. Act V of 1916, s. 2, ante, p. 204.

³ *Wallis v. Taylor* (1886), 13 Calc.,

87.

⁴ *Watts v. Blackett* (1890), 18 Calc., 144; *Wallis v. Bailey* (1891), *ibid.*, 872.

⁵ Cf. *Narayan Krishna Laud v. Norman* (1868), 5 Bom. H. C. O. C., 1.

⁶ Act X of 1914, s. 2: 1st Sch.

- any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer ;
- Immovable property. (d) suits for the recovery of immovable property."

The expression "immovable property" includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.¹ It includes standing crops,² and tiled huts.³

- Partition. "(e) suits for the partition of immovable property ;
- Foreclosure or redemption. (f) suits for the foreclosure or redemption of a mortgage of immovable property ;
- Interest in immovables. (g) suits for the determination of any other right to or interest in immovable property ;
- Specific performance, rescission. (h) suits for the specific performance or rescission of contracts ;
- Injunction. (i) suits to obtain an injunction ;
- Cancellation, rectification. (j) suits for the cancellation or rectification of instruments ;
- Trusts. (k) suits to enforce a trust ;⁴
- General average, etc. (l) suits for a general average loss and suits on policies of insurance on sea-going vessels ;
- Collision. (m) suits for compensation in respect of collisions on the high seas ;
- Patent, etc. (n) suits for compensation for the infringement of a patent, copyright, or trade mark ;
- Partnership. (o) suits for a dissolution of partnership or for an account of partnership transactions ;
- Accounts. (p) suits for an account of property and its due administration under the decree of the Court ;⁵
- Libel, etc. (q) suits for compensation for libel, slander, malicious prosecution, adultery, or breach of promise of marriage .⁶

¹ General Clauses Act (X of 1897), s. 3 (25).

² *Cheda Lal v. Mulchand* (1891), 14 All., 30; *Madayya v. Yenkata* (1887), 11 Mad., 138.

³ *Amrita Lal Kalay v. Nibaran Chandra Nayek* (1904), 31 Calc., 340, see *post*, p. 279.

⁴ This does not include a suit to recover an annuity payable under a will, and assented to by executors: *Dossibai v. Cooverbai* (1908), 32 Bom., 575; 10 Bom. L. R., 758.

⁵ This includes a suit for a legacy

where it is not alleged that the assets are sufficient or that the executor had admitted assets: *Okhoy Coomar Bonnerjee v. Koylash Chunder Ghosal* (1890), 17 Calc., 337.

⁶ This means a suit between the parties who contemplate contracting the marriage, and has no application to a suit between the intending bridegroom and the father of the intending bride: *Muhammad Ashruff Hussain Sahab (Hakim) v. Muhammad Ali Sahab (Syed)* (1901), 24 Mad., 652.

- | | |
|--|---------------------------|
| (r) suits for the restitution of conjugal rights, or for a divorce ; ¹ | Conjugal rights, divorce. |
| (s) suits for declaratory decrees ; ² | Declaratory decree. |
| (t) suits for possession of an hereditary office ; | Hereditary office. |
| (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ; | Princes, etc. |
| (v) suits on any judgment of a High Court ; | Judgment. |
| (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force." | |

The Court has jurisdiction to determine questions of title to immovable property, which arise incidentally in suits.³

The following suits (amongst others) lie in the Small Cause Court :

- | | |
|--|--------------|
| (a) Suits for the return of property or for the payment of its value. ⁴ | Trov & R. |
| (b) Suits for damages or trespass to immovable property. ⁵ | Trespass. |
| (c) Suits for maintenance. ⁶ | Maintenance. |
| (d) Suits to recover property attached in execution of a decree. ⁷ | |
| (e) Suits by a wife to recover costs and arrears of maintenance. ⁸ | |

"Section 20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

"Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

"Section 21.⁹ All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of

Court may by consent try suits beyond pecuniary limits of jurisdiction.

Suits by and against officers of Court.

¹ Act X of 1914, s. 2, Sch. II.

² This does not include a suit to recover movable property attached : *Rajammal v. Narayanasamy Naicker* (1915), 39 Mad., 219.

Rajendra Mullick v. Nanda Lall Gupta (1904), 31 Calc., 1001 ; *Amrita Lal Kalay v. Nibaran Chandra Nayek* (1904), *ibid.*, 840 ; *Bapuji Raghunath v. Kuvarji Edulji Umrigar* (1896), 15 Bom., 400 ; *Krishnamachari v. Komalammal* (1920), 48 Mad., 908.

⁴ *Khurshedji Rustomji Colah v. Pes-*

tonji Cowasji Bucha (1888), 12 Bom., 578.

⁵ *Peary Mohun Ghosaul v. Harra Chunder Gangooly* (1885), 11 Calc., 261.

⁶ *Pokala v. Murugappa* (1886), 10 Mad., 114.

⁷ *Raghunath Mukund v. Sarosh Kama* (1898), 23 Bom., 266.

⁸ *Erachshaw v. Dinbai (Bai.)* (1920), 45 Bom., 318 ; 22 Bom. L. R., 1293.

⁹ As amended by Act I. of 1895, s. 10.

property taken in execution of its process, or the proceeds or value thereof, and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed."

Costs when plaintiff sues in High Court in cases cognizable by Small Cause Court.

"Section 22.¹ If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than one thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;²

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court."

Execution of decrees of Small Cause Court by other Courts.

"Section 31.³ If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, movable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

- (a) in the case of execution against immovable property situate within such local limits—to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be ;
- (b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any movable or immovable property of such judgment-debtor, may be found."

Power to delegate non-judicial duties.

"Section 33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts,⁴ may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf."

¹ As amended by Act I of 1895, s. 11.

² Even where the amount claimed was in excess of the jurisdiction of the Small Cause Court: *Shridham v.*

Gordhandas (1901), 26 Bom., 235; 3 Bom. L. R., 893.

³ As amended by Act VII of 1892, s. 12.

⁴ Act V of 1906, Sch. I, O. 26, r. 11.

The Registrar cannot set aside an *es parte* decree¹ or give leave to sue.²

"The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

"Section 34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same: Registrar to hear and determine suits like a Judge.

"Provided that, subject to the control of the Chief Judge, Proviso. any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

"Section 35. The Registrar may receive applications for the execution of decrees of any value passed by the Court and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act. Registrar may execute all decrees with the same powers as a Judge.

"Section 36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

"Section 37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of a Small Cause Court shall be final and conclusive."³ General finality of decrees.

A suit cannot be brought to set aside an order made by a Small Cause Court in a claim to attached property.⁴

"Section 38. Where a suit has been contested the Small Cause Court⁵ may, on the application of either party, made within eight days from the date of the decree or order⁶ in the New trial of contested cases.

¹ *Haladhar Maiti v. Choytonna Maiti* (1903), 30 Calc., 588; 7 C. W. N., 547.

² *Ante*, p. 258.

³ As amended by Act I of 1895, s. 13. This shows that no appeals lie: *Chinnasami Pillai v. Karuppa Udayan* (1896), 21 Mad., 234. There is nothing to prevent an application to set aside a dismissal for default: *Soonderlal v. Goorprasad* (1898), 23 Bom., 414.

⁴ *Denonath Batabyal v. Nuffer Chunder Nundy* (1899), 26 Calc., 778;

3 C. W. N., 590, following *Ismail Bhamji v. Mahomed Khan* (1891), 18 Calc., 293.

⁵ This jurisdiction can be exercised by two judges: *Behram v. Ardeahir* (1903), 27 Bom., 563; 5 Bom. L. R., 555.

⁶ This does not apply to an order setting aside an order dismissing a suit for default: *Chinnathambi Mudaliar v. Veerabadriah Naidoo* (1902), 25 Mad., 168.

suit (not being a decree passed in accordance with an award),¹ order a new trial² to be held, or alter, set aside or reverse, the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.³

“Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.”

The powers of the Court under this section are given in the widest terms, and they are discretionary. They are revisional, and not appellate.⁴ It has been held that the Court cannot make a decree dismissing the suit,⁵ but there is authority, which is, it is submitted, correct, that it can make a decree, or other order.⁶

The Court can direct a new trial on a question of fact or law,⁷ but it should not direct a new trial when the question is one of evidence, unless the judgment is manifestly against the weight of the evidence.⁸

A question of jurisdiction can be raised for the first time on an application for a new trial.⁹

A rule requiring the deposit in Court of the amount of the decree, or security therefore before applying for a new trial, is *ultra vires*.¹⁰

Removal of
certain causes
into High
Court.

“Section 39.—(1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant, or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of

¹ Act V of 1908, Sch. II, para. 16.

² This includes a second new trial: *Surrut Coomari Dassee v. Radha Mohun Roy* (1895), 22 Calc., 784. Cf. *Purson Chund Golacha v. Kajooram* (1878), 10 B. L. R., 355; 19 W. R. O. R., 208.

³ As to the constitution of the Court, hearing the application for a new trial, see *Ramchandra Sagore-mull v. Amarchand* (1920), 47 Calc., 769; 24 C. W. N., 788.

⁴ *Bapuji v. Dastur* (1906), 8 Bom. L. R., 678; see *In re Shivlal Padma* 1909, 34 Bom., 316.

⁵ *Sassoon v. Hurry Das Bhukut* (1896), 24 Calc., 455; 1 C. W. N., 44.

⁶ *Behram v. Ardesahir* (1908), 27 Bom., 568; 5 Bom. L. R., 555; *Sassoon v. Hurry Das Bhukut* (1896),

24 Calc., 455; *Jadumani Boistabee v. Ram Kumar Chakravarti* (1902), 29 Calc., 239.

⁷ *Smidt v. Ram Prasad* (1911), 38 Calc., 425; *Sonoo Narayan v. Dinkar* (1917), 42 Bom., 80; 19 Bom. L. R., 944. The Madras High Court has taken a contrary view: *Sai Sikandar Rowther v. Ghouse Mohidin Marakayar* (1916), 40 Mad., 355.

⁸ *Sadasook Gambir Chund v. Kannayya* (1895), 19 Mad., 96; *Chinnasami Pillai v. Karuppa Udayan* (1896), 21 Mad., 234.

⁹ *Chundee Ohurn Dutt v. Elduljee Cowasjee Bijnes* (1882), 8 Calc., 678; 11 C. L. R., 225.

¹⁰ *Madurai Pillai v. Muthu Chetty* (1914), 38 Mad., 823.

the High Court for an order removing the cause into the High Court."

In Madras the High Court may remove the suit to its own file or transfer it to the Madras City Civil Court.¹

"(2)² Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right :

"Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed, and of the costs which may become payable by him to the plaintiff in respect of the said suit.

"(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

"(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

"Section 40.—(1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

Rules with respect to suits removed under the last foregoing section.

"Section 41. When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed two³ thousand rupees, as the tenant, or by permission of another person, or of some person through whom such other person claims,

Summons against person occupying property without leave.

"and such tenancy or permission has determined or been withdrawn,

"and such tenant or occupier or any person holding under

¹ Mad. Act V of 1916, s. 3.

² Act IX of 1912, s. 2.

³ Act IV of 1906, s. 3.

or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

“such other person may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.”

This section is concerned with the right to recover possession rather than with title.

A purchaser from a mortgagee has no right of possession under this section.¹

It has been held under the corresponding section of Act IX of 1850 that a defence raising an adverse title takes away the jurisdiction of the Court,² and it is said that such a defence has a similar effect under this Act.³ It is submitted that if the tenancy or possession be proved, the nature of the defence does not oust the jurisdiction.⁴

As to the procedure in proceedings under this provision, see sections 42 to 48 of the Act.

The Small Cause Court cannot review⁵ or alter⁶ its order under this section.

Recovery of
possession no
bar to suit to
try title.

“Section 49. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.”

Distress for
rent.

A Presidency Small Cause Court has power to issue and execute warrants of distress in respect of arrears of rent of any house or premises within the limits of its jurisdiction, other than rent due to Government or rent which has been due for more than twelve months before the application for a distress warrant.⁷

Transfer to
High Court.

In the case of an application to discharge or suspend the warrant, or of a claim to property seized under such distress warrant, where the subject-matter in dispute exceeds in value the sum of one thousand rupees, the High Court may on the application of the applicant for a distress warrant, or of the claimant, transfer the case to itself.⁸

Reference
when
compulsory.

“Section 69.—(1) If two or more Judges of the Small

¹ *Chabildas v. Mowji Dayal* (1901), 26 Bom., 82; 8 Bom. L. R., 456.

² *Nowla Ooma v. Bala Dhurmaji* (1877), 2 Bom. 91.

³ *Davidas Harjivandas v. Tyabally Abdul Ally* (1885), 10 Bom., 30, at p. 32.

⁴ Cf. *ante*, p. 11.

⁵ *Framros v. Dalsukhbhai* (1920), 28 Bom. L. R., 888.

⁶ *Jamshedji v. Gordhandas* (1920), 45 Bom., 1048; 28 Bom. L. R., 442.

⁷ Act XV of 1882, chap. viii.

⁸ Act XV of 1882, s. 63.

Cause Court sit together in any suit,¹ or in any proceeding for the recovery of immovable property under the Act,² and differ in their opinion as to any question of law or usage having the force of law,³ or the construction of a document, which construction may affect the merits, or

“if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, upon which the Court entertains reasonable doubt, and either party so requires,

“The Small Cause Court shall⁴ draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court.⁵

“(2) When the Small Cause Court so refers any question for the opinion of the High Court, it shall either reserve judgment or give judgment contingent upon such opinion.”⁶

It has been held that a Full Bench of the Small Cause Court cannot state a case for the opinion of the High Court on an application for a new trial under section 88 (*ante*, pp. 263, 264),⁷ but where a new trial is granted it has been held that such case must be stated where the Judges differ in opinion.⁸

A reference is not possible on an application for a distress warrant.⁹

A party requiring a reference should apply for it before the judgment is delivered.¹⁰

On receipt of the opinion of the High Court the Small Cause Court must enter up judgment in strict accordance with such opinion.¹¹

As to security to be furnished on such reference, see Act XV of 1882, Security. s. 70.

Unless such security is at once furnished, the party against whom If no such security given,

¹ Act IV of 1906, s. 4.

² This includes an application for a new trial: *Lodd Govindoss Krishnadoss v. Rukmani Bai* (1913), 38 Mad., 438.

³ See *Ishwardas Tribhovandas v. Kalidas Bhaidas* (1896), 20 Bom., 779; *Benode Lal Roy v. River Steam Navigation Company* (1897), 1 C. W. N., 143.

⁴ *Bangiah Naidu v. Rungiah* (1908), 31 Mad., 490.

⁵ *Garling v. Secretary of State* (1908), 30 Calc., 458.

⁶ Act IV of 1906, s. 4.

⁷ *Oakshott v. British India Steam Navigation Company* (1891), 15 Mad., 179; *Nusserwanjee v. Pursutom Doss* (1885), 11 Calc., 298; differed from in *Ramasamy Aiyar v. Madras Times* (1915), 30 Mad. L. J., 207.

⁸ *Seshammal v. Munusami Mudali* (1896), 20 Mad., 358.

⁹ Cf. *Mohun Sing v. Kareem Oonissa Begum* (1875), 8 Mad. H. C., 57.

¹⁰ *Bank of Bengal v. Vyabhoy Gangji* (1891), 16 Bom., 618.

¹¹ See Act V of 1908, O. 48, r. 3; *Yule & Co. v. Mahomed Hossain* (1896), 24 Calc., 129.

party to be deemed to have submitted to judgment.

such contingent judgment has been given shall be deemed to have submitted to the judgment.¹

Although he fails to give such security a party can apply for a new trial.²

Misconduct of officers.

As to the power of the Court to deal with the misconduct of inferior ministerial officers, see sections 78-82.

Certain persons exempt from arrest by Court.

“Section 93. The Governor-General and members of his Council, the Governors of Fort St. George and Bombay, and the members of their respective Councils, the Governor of Bengal, and the Chief Justices and Judges of the High Courts established under 24, 25 Vict. c. 104, or under 5, 6, Geo. V. c. 61, shall not be liable to arrest by order of the Small Cause Court.”³

¹ Act XV of 1882, s. 70; *Jugal Kishore v. Sewmuk Roy* (1901), 28 Calc., 260.

² *Protap Chunder Sen v. Tunsook Dass* (1896), 23 Calc., 967.

³ Cf. *ante*, p. 31.

CHAPTER XXV.

PROVINCIAL SMALL CAUSE COURTS.

THE law relating to Courts of Small Causes outside the Presidency towns of Calcutta, Madras, and Bombay and the City of Rangoon is to be found in the Provincial Small Cause Court Act,¹ which extends to the whole of British India except those towns² and the City of Rangoon.³

As to the places to which the general enactments do not apply, but to which this Act has been extended, see "Unrepealed General Acts," vol. iv. p. 12 (4th edn.).

By section 3 that Act does not affect the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs,⁴ or Village Panchayats under the provisions of the Madras Code, or of Village Munsifs under the Dekkhan Agriculturists' Relief Act, 1879;⁵ or any local law or any special law other than the Code of Civil Procedure.⁶

"Section 5.⁷—(1) The Local Government may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency town.

"(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the Local Government may define, and the Court may be held at such place or places within those limits as the Local Government may appoint.

¹ Act IX of 1887.

² *Ibid.* s. 1.

³ Bur. Act VII of 1920, s. 2 (1).

⁴ See *Mirkhan v. Kadarsa* (1889), 13 Mad., 145.

⁵ Act XVII of 1879, *ante*, pp. 160, 161.

⁶ Act V of 1908.

⁷ As amended by Act IV of 1914, Sch., Pt. I.

Judge.

"Section 6.—(1) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court.

"(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs."

Additional
Judge.

"Section 8.¹—(1) The Local Government may, by order in writing, appoint Additional Judges of a Court of Small Causes or of two or more such Courts.

"(2) An Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

"(3) The Judge may withdraw from the Additional Judge any business pending before him.

"(4) When the Judge is absent, the senior Additional Judge may discharge all or any of the functions of the Judge."

As to an Additional Judge of a Cantonment Court of Small Causes, see *post*, p. 272.

Suspension
and removal
of Judges.

"Section 9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

Power to
require two
Judges to sit
as a Bench.

"Section 10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

Decision in
case heard by
a Bench.

"Section 11.—(1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and sections 113, 114, and Sch. I, Order XLVI, of Act V of 1908, shall apply to the reference.

"(2) If they differ on any matter other than a matter

¹ As amended by Acts IV of 1914, Sch., Pt. I, and XI of 1915, Sch. I.

specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him shall prevail.

"For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

"Section 12.—(1) The Local Government may appoint to Registrar. a Court of Small Causes an officer to be called the Registrar of the Court.

"(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

"(3) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

"(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

"(5) A Registrar may be suspended or removed from office by the Local Government."

Small Cause Court powers can be given to other Courts.

In Aden the Resident has Small Cause Court powers, and every Assistant Resident has such powers if he has been vested with them by the Governor of Bombay in Council.¹ Small Cause Court powers. Aden.

As to the investiture of Subordinate Judges, Munsifs, and others with the powers of a Small Cause Court see—

Ajmere Courts Regulation,²

Bengal, Agra and Assam Civil Courts Act,³

Bombay Civil Courts Act,⁴

British Baluchistan Civil Justice Regulation,⁵

Burma Civil Courts Act,⁶

Central Provinces Courts Act,⁷

Coorg Courts Regulation,⁸

Madras Civil Courts Act,⁹

North-West Frontier Province Law and Justice Regulation,¹⁰

¹ Act II of 1864, s. 14.

² Reg. I of 1877, ss. 11, 12, *ante*, pp. 100, 101.

³ Act XII of 1887, s. 25, *ante*, p. 114.

⁴ Act XIV of 1869, s. 28, *ante*, p. 146.

⁵ Reg. IX of 1896, ss. 6, 94, *ante*, pp. 166, 169.

⁶ Bur. Act IX of 1922, *ante*, p. 173.

⁷ C. P. Act I of 1917, s. 18, *ante*, p. 181.

⁸ Reg. I of 1901, s. 18, *ante*, p. 202.

⁹ Act III of 1878, s. 28, *ante*, p. 210.

¹⁰ Reg. VII of 1901, s. 59, *ante*, p. 227.

Oudh Civil Courts Act,¹

Punjab Courts Act.²

Cognizance of
suits by Courts
of Small
Causes.

"Section 15.—(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.³

"(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature⁴ of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes."

As to Judges of Cantonment Courts of Small Causes, see Act XV of 1910, s. 8.

"(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

As to a Court of Small Causes of which a cantonment Magistrate is a Judge, see Act XV of 1910, s. 7.

Exclusive
jurisdiction of
Courts of
Small Causes.

"Section 16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."

This does not prevent a suit in a Munsif's Court, although there may be in another place a Small Cause Court having jurisdiction.⁵

Trial of suits
by Registrar.
Decrees by
Registrar.

"Section 18.—(1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits and execute the decrees respectively.

"(2) The Judge may transfer to his own file, or to that of the Additional Judge if any Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

¹ Act XIII of 1879, s. 24, *ante*, p. 241.

² Punj. Act VI of 1918, s. 29, *ante*, pp. 245, 246.

³ *Post*, pp. 279-287. A case not mentioned in the schedule can be tried

by a Court of Small Causes: *Misaji Lall v. Partab Kunwar* (1919), 42 All., 169.

⁴ *Post*, pp. 294-303.

⁵ *Ratnagiri Pillai v. Vava Ravuthan (Syed)* (1896), 19 Mad., 477.

"Section 19.—(1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it. Admission, return, and rejection of plaints by Registrar.

"(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him :

"Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned, or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

"Section 20.—(1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge. Passing of decrees by Registrar on confession.

"(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and rehear the suit, on the same conditions, on the same grounds, and in the same manner as if the decree had been passed by himself.

"Section 21.—(1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge, or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge may make under this Act. Execution of decrees by Registrar.

"(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by

himself and with respect to such proceedings have not been taken by the Judge under this sub-section, may of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

Adjournment
of cases by
chief minis-
terial officer.

"Section 22. When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

Return of
plaints in suits
involving
questions of
title.

"Section 23.—(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot fully determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title."¹

On the plaint being returned and presented to a Court having jurisdiction that Court is bound to receive the plaint and try the case,² as it was framed.³

The return of the plaint under this section does not prevent the suit being of a nature cognizable by a Small Cause Court.⁴

Appeal from
fine, etc.

An appeal lies to the District Court from an order imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree,⁵ and from an order giving com-

¹ See post, p. 280. This is a matter of discretion: *Ganga Prasad v. Nanduram* (1916), 20 C. W. N., 1080; 1 Pat. L. J., 465. See *Umesh Chandra Palodhi v. Rakhal Chandra Chatterjee* (1911), 15 C. W. N., 666. A transfer to the Judge's file in his ordinary jurisdiction was held to be valid under this section in *Hari Balu v. Gangatrao Lakhurji* (1918), 38 Bom., 190; 15 Bom. L. R., 1036.

² *Subbaroyadu v. Gangayya* (1906), 29 Mad., 329; *Mahamaya Dasya v.*

Nitya Hari Das Bairagi (1895), 28 Cal., 425; *Chander Bodan Koer v. Sheodhur Purshad* (1912), 18 C. W. N., 380.

³ *Rash Behari Pal Chowdhry v. Shridhar Belal* (1902), 6 C. W. N., 687.

⁴ *Kali Krishna Tagore v. Issatan-nissa Khatun* (1897), 24 Cal., 557; *Sada Shankar v. Brij Mohan Das* (1896), 20 All., 480.

⁵ Section 24 of the Act read with Act V of 1906, s. 104 (h).

pensatory costs in respect of false or vexatious claims or defences.¹

An appeal also lies from an order made by a Court of Small Causes Insolventy. in the exercise of Insolventy Jurisdiction.²

"Section 25. The High Court, for the purpose of satisfying itself that a decree or order³ made in any case decided⁴ by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

As for instance : where the Small Cause Court refused to permit the amendment of a technical defect in the plaint,⁵ or where there was no judgment in accordance with law,⁶ or where the Small Cause Court without evidence assumed the *mala fides* of an application for extension of time for applying for execution.⁷

This section is wider in its scope than section 115 of the Civil Procedure Code.⁸ Under this section the High Court can at its discretion interfere in case of an error in law, in procedure,⁹ and in fact, but the Court will not ordinarily interfere on a question of fact,¹⁰ and will not interfere in any case unless injustice has been done by the Court below.¹¹

A refusal to revise does not prevent an amendment of a decree by the Court of Small Causes which passed it.¹²

Order 46, r. 7, of the Civil Procedure Code (Act V of 1908), is as follows : " (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding¹³ a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, as to jurisdiction.

¹ Act IX of 1922, s. 5.

² *Vaikunta Prabhu v. Moidin Saheb* (1891), 15 Mad., 89; Act V of 1920 (Provincial Insolventy), s. 75.

³ This has been held not to include an order returning a plaint under section 28: *Subal Ram Dutt v. Jagadanunda Masumdar*. (1909), 13 C. W. N. 408.

⁴ I.e. "disposed of": *Makhan Lal v. Chummi Lal* (1918), 41 All., 42.

⁵ *Heydorn v. Muhammad Shafi* (1912), 84 All., 248.

⁶ *Malik Rahmat v. Shiva Prasad* (1891), 18 All., 588.

⁷ *Bhairon Prasad v. Amina Begam* (1916), 88 All., 690.

⁸ *Elahi Buksh Mandal v. Ram Narayan Ghosh* (1911), 16 C. W. N., 288.

⁹ *Poona City v. Ramji* (1895), 21 Bom., 250, approved of in *Elahi*

Buksh Mandal v. Ram Narayan Ghosh (1911), 16 C. W. N., 288.

¹⁰ *Ratan Bepari (Sheikh) v. Hira Lal Sarhar* (1916), 20 C. W. N., 1110; *Nathuram v. Dhularam* (1920), 45 Bom., 292; 22 Bom. L. R., 1199.

¹¹ *East Indian Railway Company v. Kali Charan Ram Prasad*, [1922, Pat.], 145.

¹² *Khuda Bakhsh v. Allah Ditta* (1919), 1 Lahore, 842.

¹³ This does not apply when the point has not been taken: *Ram Lal v. Kabul Singh* (1902), 25 All., 125.

¹⁴ When the District Court considers that the Subordinate Court has acted erroneously it must, if a party require it, refer the matter: *Madan Gopal v. Bhagwan Das* (1888), 11 All., 304; *Simson v. McMaster* (1890), 18 Mad., 844.

Revision of decrees and orders of Courts of Small Causes.

Power of District Court to submit for revision proceedings had under mistake as to jurisdiction.

submit the record to the High Court with a statement of its reasons¹ for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

"(2) On receiving the record and statement the High Court may make such order in the case as it sees fit.²

"(8) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstances appears to it to be just and proper.

"(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule."

This is an enabling section, and does not cut down the jurisdiction of the Appellate tribunal.³

Finality of
decrees and
orders.

"Section 27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final."

There is no appeal even when the suit is tried under his ordinary procedure by a Munsif or Subordinate Judge invested with Small Cause Court powers,⁴ or where he tried as a Small Cause a suit not triable as such.⁵ There is an appeal when he has not been so invested, even if the suit was filed in the Court of a Munsif having such powers.⁶

There being no appeal the only remedy of an aggrieved person is by an application to the High Court for revision.⁷

This provision has no application to a suit which was transferred under section 28 (*ante*, p. 274),⁸ or to any order by a Munsif to whose Court a Small Cause Court decree has been sent for execution.⁹

Subordination
of Courts of
Small Causes.

"Section 28.—(1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court.

¹ *Chhotu v. Jawahir* (1905), 28 All., 293.

² The High Court can deal with the case on its merits: *Suresh Chandra Maitra v. Kristo Rangini Dasi* (1893), 21 Cal., 249; *Parameshwaran Nambudiri v. Vishnu Embrandri* (1904), 27 Mad., 478, differing from *Ramasamy Chettiar v. Orr* (1902), 26 Mad., 176.

³ *Simhadri Appa Rao (Sri Raja) v. Chelasane Bhadrappa* (1906), 30 Mad., 41.

⁴ *Indra Chandra Mukherjee v. Prish Chandra Banerjee* (1918), 40 Cal., 587; *Shankarbai v. Somabhai* (1900), 25 Bom., 417; 3 Bom. L. R., 129; *Abdul Majid v. Bedyadhar*

Saran Das (1916), 39 All., 101; *Kollipara Seetapathy v. Kankipati Subbaya* (1909), 33 Mad., 323.

⁵ *Diwalibai v. Sadashivdas* (1899), 24 Bom., 310; 1 Bom. L. R., 836.

⁶ *Zamir-ul-Hassan Khan v. Imdad Ali Khan* (1921), 44 All., 59; *Bhagawan Das v. Keshwar Lal* (1922), 1 Pat., 696.

⁷ *Ibid.* See s. 25, *ante*, p. 275, and s. 28, below.

⁸ *Hari Balu v. Ganpatrao Lakhurjirao* (1918), 38 Bom., 190; 15 Bom. L. R., 1036.

⁹ *Of. Perumal v. Venkatarama* (1887), 11 Mad. 130. As to a second appeal, see Act V of 1908, s. 102, *post*, p. 345.

“(2) The regulation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established.”¹

“Section 30. The Local Government may, by order in writing, abolish a Court of Small Causes.”²

Abolition of Courts.

“Section 31.—(1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.”

Power to appoint Judge of Court of Small Causes to other office.

“Section 32.—(1) So much of Chapters III and IV as relates to—

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in those suits,

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

“(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.”³

This sub-section applies also to a case where the jurisdiction of the Court as a Court of Small Causes has been raised.⁴

“Section 33. A Court invested with the jurisdiction of a

Application of Act and Code

¹ See *ante*, pp. 110, 142, 209.

² See *ante*, p. 272.

³ *Ugrah Singh v. Motihari Co.* (1918), 4 Pat. L. J., 18; *Bindeshri v. Ganga Prasad* (1919), 42 All., 195.

⁴ *Hari Kamayya v. Hari Venkayya* (1908), 26 Mad., 212; *Mahima Chandra Sirdar v. Kali Mondol* (1907), 12 C. W. N., 167.

to Court so
invested as to
two Courts.

Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,¹ be deemed to be different Courts."

This section precludes a Subordinate Judge, invested with Small Cause Court powers under section 28 of Act XIV of 1869 (Bombay Civil Courts)² from entertaining a counter-claim beyond the pecuniary limits of his Small Cause Court jurisdiction.³

As to a Small Cause Court sending a decree for execution to itself, see section 84 of the Act.

Continuance of
proceedings of
abolished
Courts.

"Section 35.—(1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case,⁴ any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit."⁵

The suit remains of the nature of a Small Cause Court suit.⁶

When a Munsif having Small Cause Court powers is succeeded by a Munsif not having such powers, suits pending before him must be tried as regular suits and an appeal lies.⁷

"(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure,⁸ as extended to Courts of Small Causes, or in any other enactment for the time being in force."

¹ Act V of 1908.

² *Ante*, p. 146.

³ *Barote Gago Pershotam v. Sepoy Panju Ramjan* (1889), 14 Bom., 371. Cf. *Rampratap v. Ganesh Rangnath* (1887), 12 Bom., 31.

⁴ As to the Judge going on leave, see *Chatur Singh v. Rania (Musammat)* (1918), 40 All., 525.

⁵ See *Zamindar of Vallur v. Adinarayudu* (1896), 19 Mad., 445; *Kurella Chenchayya v. Poliseti Sitaramaswamy* (1906), 30 Mad., 217; *Dulal Chandra Deb v. Ramnarain Deb*

(1904), 31 Calc., 1057, differing from *Mangal Sen v. Rup Chand* (1891), 13 All., 324.

⁶ *Narayan Ravji v. Gangaram Ratanchand* (1909), 33 Bom., 664.

⁷ *Lachman Das v. Ahmad Hasan* (1917), 89 All. 357, following *Sorju Prasad v. Mahadeo Pande* (1915), 37 All., 450; *Dulal Chandra Deb v. Ram Narain Deb* (1904), 31 Calc., 1057. See *Mangal Sen v. Rup Chand* (1891), 13 All., 324.

⁸ Act V of 1908.

As to the withdrawal of a suit from a Court of Small Causes, see Civil Procedure Code (Act V of 1908), section 24, *post*, pp. 320, 321.

"THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(See section 15.)

"(1) A suit concerning an act or order purporting to be ^{Acts of} done or made by the Governor-General in Council or a Local ^{Government.} Government, or by the Governor-General or a Governor, or by a Member of the Council of the Governor-General or of the Governor of Madras, Bombay, or Fort William in Bengal ¹ in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government."

This refers only to an act done by the Government in its executive or administrative capacity.²

"(2) A suit concerning an act purporting to be done by any ^{Acts in pur-} person in pursuance of a judgment or order of a Court or of a ^{suaance of order} of Court. official officer acting in the execution of his office;³

"(3) a suit concerning an act or order purporting to be ^{Acts of officers} done or made by any other officer ^{of Govern-} of the Government in his ^{ment.} official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office."

This does not apply to a suit for money on a contract, which an officer of Government has failed to carry out.⁴

It has been held that a suit against the Secretary of State for damages done to an oil mill by officials of a State Railway can be brought in the Small Cause Court.⁵

"(4) A suit for the possession of immovable property ⁷ or ^{Immovable} for the recovery of an interest in such property." ^{property.}

¹ Act X of 1914, s. 2, Sch. I.

² *Municipal Council of Tuticorin v. South Indian Railwa Company* (1899), 18 Mad., 78.

³ *Prasanna Kumar Khan v. Uma Charan Haara* (1896), 1 O. W. N., 140.

⁴ This does not include a *karnam* in a settled zemindari: *Orr v. Neelamegam Pillai* (1895), 18 Mad., 395.

⁵ *Secretary of State v. Ramabrahmam* (1912), 87 Mad., 538.

⁶ *Bunwari Lal Mookerjee v. Secretary of State* (1899), 17 Cal., 290.

⁷ As to the meaning of "immovable property," see Act X of 1897, s. 3 (35). The expression includes standing crops: *Cheda Lal v. Mulchand* (1891), 14 All., 30.

This article does not apply to a suit for a share in the profits of an inam village¹ or to a share in the produce of immovable property.²

The fact that the question of title to immovable property arises incidentally does not remove a case from the jurisdiction of a Small Cause Court.³

Partition.

"(5) A suit for the partition of immovable property ;

Foreclosure or redemption.

"(6) a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage ;

Assessment, etc., of rent.

"(7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property ;

Rent.

"(8) a suit for the recovery of rent,⁴ other than house-rent,⁵ unless the Judge of the Court of Small Causes⁶ has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto."⁷

This article has no application to a suit by the proprietor of bustee land for the recovery of municipal taxes from the owner of a hut in the bustee.⁸ It includes a suit for money which under the law is recoverable

¹ *Damodar Gopal Dikshit v. Chintaman Balkrishna Karve* (1892), 17 Bom., 42.

² *Davlat Singhji (Maharana Shri) v. Khachar Hamir Mon* (1909), 34 Bom., 171 ; 11 Bom. L. R., 1830.

³ *Kesrisang v. Naransang* (1908), 82 Bom., 560 ; 10 Bom. L. R., 738 ; *Narayan v. Balaji* (1895), 21 Bom., 248 ; *Damodar Gopal Dikshit v. Chintaman Balkrishna Karve* (1892), 17 Bom., 42 ; *Vinayak v. Krishnarao* (1901), 25 Bom., 625 ; 9 Bom. L. R., 289 ; *Elahi Buksh Mandal v. Ram Narayan Ghosh* (1911), 16 C. W. N., 288. See *Puttangowda v. Nilkanth Kalo Deshpande* (1913), 37 Bom., 675 ; 15 Bom. L. R., 778 ; see s. 28, ante, p. 274.

⁴ *Sahadora Mudiali v. Nabin Chand Boral* (1914), 42 Calc., 688 ; 19 C. W. N., 1080, distinguishing *Sundaram Ayyar v. Sennia Naickan* (1900), 28 Mad., 547. See *Karunakara Kurup v. Muniperanan* (1901), 24 Mad., 356 ; *Srinivasa Raghava Ayyangar v. Pichai Karan* (1905), 29 Mad., 184. As to the meaning of "rent," see *Bande Ali Fakir v. Amud Sarkar* (1914), 19 C. W. N., 415 ;

Shoma Mehta v. Rajani Biswas (1893), 1 C. W. N., 55. As to damages for use and occupation of land, see *Mahadeo Rai v. Kesho Prosad Singh Bahadur (Maharajah)* (1916), [1917 Pat.], 81.

⁵ *Milne v. Jagmohan Gareri*, [1919, Pat.], 439.

⁶ This expression applies either to a Judge of a Court of Small Causes constituted by the Act or to a Court invested with the jurisdiction of a Court of Small Causes : *Akshay Kumar Shaha v. Hira Ram Dosad* (1908), 35 Calc., 677.

⁷ The authority must be given to the individual not to the Court : *Safer Ali Mondal v. Golam Mondal* (1915), 19 C. W. N., 1236. In Madras such authority has been given to all Subordinate Judges and District Munsifs : see *Sundaram Ayyar v. Sennia Naickan* (1900), 23 Mad., 547. No such authority has been given in Bengal : see *Sahadora Mudiali v. Nabin Chand Boral* (1914), 42 Calc., 688 ; 19 C. W. N., 1080.

⁸ *Brojonath Mittra v. Gopi Shakerani* (1896), 23 Calc., 835.

as an arrear of rent,¹ a suit for rent by an assignee,² a suit which involves the apportionment of rent,³ a suit for produce rent,⁴ and a suit for money paid for forest rights.⁵ As to a suit claiming damages for omitting to raise crops, see *Lalji Panday v. Barhamdeo Panday* (1911), 16 C. W. N., 89.

“(9) A suit concerning the liability of land to be assessed Land revenue. to land-revenue ;

“(10) a suit to restrain waste ;

Waste.

“(11) a suit for the determination or enforcement of any Land. other right to or interest in immovable property.”

This does not prevent a suit for the price of land from which the purchaser has been ejected.⁶

“(12) A suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office ;

Hereditary office.

“(13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*,⁷ or of cesses⁸ or other dues⁹ when the cesses or dues are payable to a person by reason of his interest in immovable property¹⁰ or in an hereditary office or in a shrine or other religious institution.”¹¹

Allowance or fees.

¹ *Basanta Kumar Rai (Kumar) v. Ram Chandra Roy Chaudhry* (1908), 17 C.W. N., 499; see Bengal Drainage Act (Ben. Act VI of 1880), s. 44, sub-sec. 1; *Perraju Garu v. Subbara-yudu* (1911), 36 Mad., 126.

² *Srish Chunder Bose v. Nachim Kazi* (1900), 27 Calc., 827; 4 C.W. N., 357; *Munsar (Sheikh) v. Lolke Nath Roy* (1899), 4 C.W. N., 10; *Mohendra Nath Kalamoree v. Koilash Chandra Dogra* (1900), *ibid.* 605. As to a suit for rent, a portion of which had been assigned, see *Basanta Kumari Debya v. Ashutosh Chuckerbutti* (1897), 27 Calc., 67; 4 C.W. N., 3.

³ *Rangiah Chetty v. Vajravelu Mudaliar* (1917), 41 Mad., 370.

⁴ *Shoma Mehta v. Rajani Biswas* (1893), 1 C.W. N., 55.

⁵ *Bande Ali Fakir v. Amud Sarkar* (1914), 19 C.W. N., 415.

⁶ *Gool Khan v. Tetar Goala* (1899), 4 C.W. N., 63.

⁷ *Bechai v. Badri Narain* (1921), 43 All., 681.

⁸ This does not include a suit for *jodi* (an easy or quit rent): *Venkatagiri Rajah v. Venkat Rau* (1897), 21 Mad., 243, or a suit against a tenant for the price of trees sold by him: *Bohra Bhoj Raj v. Ram Chandra* (1920), 42 All., 448.

⁹ This includes a sum payable by a *khatedar* to an *inamdar* as superior holder: *Madhavrao Moreswar v. Rama Kalu* (1914), 39 Bom., 181. It does not exclude a suit by the *zemin-dar* for recovery of land cess from the *inamdar*: *Maharajah of Vizianagram v. Veeranna* (1911), 36 Mad., 18. It includes tolls payable to the lessee of a ferry: *Abdul Hamid Khan v. Babu Lal* (1913), 35 All., 156, and dues payable in kind: *Baldeo v. Panna Lal* (1918), 40 All., 663.

¹⁰ See above.

¹¹ See *Vishnu Ganesh Joshi v. Yeshavantrao* (1895), 21 Bom., 387; *Mahadeo v. Budhai Ram* (1904), 26 All., 358; *Baradwaja Mudaliar v. Arunachala Gurukkal* (1917), 41

This article only relates to claims against a person who is primarily liable to pay the cesses or dues.¹

In one case² the Allahabad High Court said, as to this provision : "The cesses and dues therein referred to are cesses and dues which are claimed *quâ* cesses or dues and apparently from the person who is liable to pay them." The Madras High Court has differed from this view.³

Land Acquisition Act.

"(14) A suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1894,⁴ the whole or any part of the compensation ;

Specific performance.

"(15) a suit for the specific performance or rescission of a contract ;⁵

Rectification, etc., of instrument.

"(16) a suit for the rectification or cancellation of an instrument ;⁶

Injunction.

"(17) a suit to obtain an injunction ;

Trust.

"(18) a suit relating to a trust,⁷ including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution."

The following are instances of suits relating to trusts :—

(a) a suit against a guardian for an account ;⁸

(b) a suit against a person, who received subscriptions for a temple ;⁹

Endowment.

(c) a suit to obtain a share of property distributable under the terms of an endowment ;¹⁰

Negligence of manager of temple.

(d) a suit against a manager of a temple by his successor for damages for negligence.¹¹

This article does not include a suit claiming a refund of money paid

Mad., 528. This article applies to a suit by a member of a religious association to recover his share of voluntary payments made to the association : *Bhavadasan v. Narayana Somayajipad* (1904), 28 Mad., 202. See *Mahadeo v. Budhai Ram* (1904), 26 All., 358.

¹ *Shiv Gir v. Khasan Gir* (1922), 8 Lahore, 369.

² *Mahadeo v. Budhai Ram* (1904), 26 All., 358, at p. 360.

³ *Bhavadasan v. Narayana Somayajipad* (1904), 28 Mad., 202, at p. 204.

⁴ Act I of 1894. Cf. *Tirupati Raju v. Visam Raju* (1896), 20 Mad., 155.

⁵ This includes a suit to enforce an award : *Kunja Behary Bardhan v. Gosto Behary Bardhan* (1917), 22

O. W. N., 66.

⁶ For instance, a suit claiming that the whole sum was not advanced on a mortgage : *Galim Sheikh v. Sadarjan Bibi* (1916), 19 O. W. N., 1332.

⁷ See *Subramania Ayyar v. Pandi Doraisami Taver* (1902), 26 Mad., 368 ; *Krishna Ayyan v. Vythianatha Ayyan* (1894), 18 Mad., 252.

⁸ Cf. *Ramjoy Mojomdar v. Kedar Narain Roy* (Koomar) (1876), 25 W. B. O. R., 75.

⁹ *Mahomed Nathubhai v. Hosen* (1897), 23 Bom., 729.

¹⁰ *Mihr Ali Shah v. Muhammad Husein* (1892), 14 All., 413.

¹¹ *Krishnayyar v. Soundararaja Ayyangar* (1892), 21 Mad., 245.

to the defendant to repay the expenses of a suit,¹ or a suit for money lent out of trust funds,² or a suit for subscriptions due under the articles of association of a company.³

"(19) A suit for a declaratory decree, not being a suit instituted under section 283 or section 382 of the then Code of Civil Procedure;⁴ Declaratory decree.

"(20) a suit instituted under section 283 or section 382 of the then Code of Civil Procedure;⁴ Claim to attached property.

"(21) a suit to set aside an attachment by a Court or a revenue authority, or a sale, mortgage, lease or other transfer by a Court or a revenue authority or by a guardian;⁵ Attached property.

"(22) a suit for property which the plaintiff has conveyed while insane;⁶ Conveyance by insane person.

"(23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity;⁶ Suit to set aside decree, etc.

"(24) a suit to contest an award;⁷ Award.

"(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India;⁸ Suit on judgment.

"(26) a suit to compel a refund of assets improperly distributed under section 73 of the Code of Civil Procedure (Act V of 1908);⁹ Refund of assets.

"(27) a suit under the Indian Succession Act, 1865,⁷ section 320 or section 321, or under the Probate and Administration Act, 1881,⁸ section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;⁹ Refund in administration.

"(28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate."¹⁰ Legacy, etc.

This article has no application to a suit for articles which were to

¹ *North-Western Commercial Banking Corporation v. Muhammad Ismail Khan* (1901), 24 All., 208.

² *Sundaralingam Chetti v. Mariyappa Chetti* (1902), 26 Mad., 200.

³ *Venkatachallapathy v. Kanagasabhapathia Pillai* (1910), 83 Mad., 494.

⁴ See now Act V of 1908, 1st Sch., O. 21, rr. 68, 100, 101, 108.

⁵ *Sonaram Dass v. Mohiram Dass* (1909), 28 Cal., 285. As to the case where the judgment debtor has no

saleable interest, and a suit is brought for the refund of the money, see *Prasanna Kumar Khan v. Uma Churn Hasra* (1896), 1 C. W. N., 140; *Makundram v. Bodh Kishen* (1897), 20 All., 80.

⁶ This does not apply to a suit to recover money on the ground that the judgment debtor had no saleable interest, see *Makundram v. Bodh Kishen* (1897), 20 All., 80.

⁷ Act X of 1865.

⁸ Act V of 1881.

come to the plaintiff on a death,¹ or to suits by heirs of an intestate against wrong-doers.²

Partnership.

"(29) A suit—

- (a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;
- (b) for an account of partnership transactions; or
- (c) for a balance of partnership account, unless the balance has been struck by the parties or their agents."³

This article does not apply to a suit by a retired partner for money agreed to be paid to him in consideration of his retirement.⁴

Account.

"(30) A suit for an account of property and for its due administration under decree;

"(31) any other suit for an account,⁵ including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant."⁶

Mesne profits.

A suit for an account of mesne profits comes within this article,⁷ but a Small Cause Court has jurisdiction to try a suit for a specific sum of money wrongfully received, being profits of immovable property.⁸

This article does not apply to a suit for damages for trespass,⁹ or to a case where the profits have been rightfully received.¹⁰

Average loss, etc.

"(32) A suit for a general average loss or for salvage;

Collision.

"(33) a suit for compensation in respect of collision between ships;

¹ *Chinnaya v. Achammah* (1912), 37 Mad., 598.

² *Tika Sahu v. Chirkat Sahu* (1814), 19 C. W. N., 614; *Chhedi v. Gulab* (1905), 27 All., 622.

³ *Marimuthu v. Saminatha Pillai* (1897), 21 Mad., 866; *Chhotu v. Jawahir* (1905), 28 All., 298.

⁴ *Fauji Lal v. Changa Mal* (1897), 19 All., 513.

⁵ This means a suit requiring a special process to take an account. The mere fact that accounts have to be looked into does not make a suit a suit for an account: *Konduru Runga Reddi v. Subiah Setty* (1904), 28 Mad., 394; *Rajiva Narayan Sahay v. Kirat Narayan Singh* (1917), 8 Pat. L. J., 428; [1918, Pat.], 55.

⁶ See *Rameshar Singh v. Durga*

Das (1901), 28 All., 437.

⁷ *Kunjo Behary Singh v. Madhub Chandra Ghose* (1896), 28 Cal., 884; *Savarimuthu v. Aithurusu Rowthar* (1901), 25 Mad., 108; *Drigpal Singh v. Kunjal* (1917), 40 All., 142.

⁸ *Antone v. Mahadev Anant* (1900), 25 Bom., 85; 2 Bom. L. R., 688; *Girjabai v. Raghunath* (1905), 30 Bom., 147; 7 Bom. L. R., 741; *Vinayak v. Krishnarao* (1901), 25 Bom., 625; 3 Bom. L. R., 239, as explained in *Vasudev v. Damodar* (1904), 6 Bom. L. R., 370.

⁹ *Ramaiyar v. Saminatha Ayyar* (1911), 35 Mad., 726.

¹⁰ *Damodar Gopal Dikshit v. Chintaman Ballerishna Karve* (1892), 17 Bom., 42.

“(34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy; Policy of insurance.

“(35) a suit for compensation— Compensation.

- (a) for loss occasioned by the death of a person caused by actionable wrong;
- (b) for wrongful arrest, restraint or confinement;
- (c) for malicious prosecution;¹
- (d) for libel;
- (e) for slander;
- (f) for adultery or seduction;
- (g) for breach of contract of betrothal or promise of marriage;²
- (h) for inducing a person to break a contract made with the plaintiff;
- (i) for obstruction of an easement or diversion of a water-course;³
- (ii) for an act which is, or, save for the provisions of chapter iv of the Indian Penal Code (Act XLV of 1860), would be, an offence punishable under chapter xvii of the said Code;⁴
- (j) for illegal, improper or excessive distress, attachment⁵ or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress, search or legal process.”⁶

A suit to recover money paid to redeem crops, which had been distrained is cognizable by a Small Cause Court.⁷ A suit to recover the value of property illegally retained after a distraint had been set aside,⁸

¹ *Mahomed Ali v. Bayama* (1889), 14 Bom., 100.

² This includes a suit by the father of a girl against the father of the boy: *Kali Sunker Dass v. Koylash Chunder Dass* (1898), 15 Calc., 833, followed in *Moidin Kutti v. Poker* (1913), 38 Mad., 274.

³ *Periakaruppan v. Palaniyandi* (1894), 18 Mad., 28. This does not include a suit for damages for injury to a wall caused by the diversion of a watercourse: *In re Hausambhai Abdulabhai* (1895), 20 Bom., 283.

⁴ Act VI of 1914, s. 2. Such as crops or money misappropriated: *Ramprosad Pramanik v. Sricharan Mandal* (1917), 21 C. W. N., 1109; *Cherakuddin v. Ram Siraman* (1920),

48 Calc., 879. See *Shiv Gir v. Khazan Gir* (1922), 3 Lahore, 369; *Mirsa Dilbar Hossain v. Sadaruddin Chowdhury* (1922), 27 C. W. N., 469.

⁵ *Pamu Sanyasi v. Zamindar of Jayapur* (1901), 25 Mad., 540. See *Karuppanan Ambalam v. Ramasami Chetti* (1897), 21 Mad., 289; *Prasanna Kumar Khan v. Uma Charan Hazra* (1896), 1 C. W. N., 140. As to attachment before judgment, see *Ibrahi Rowthen v. Sangaram Shetty* (1902), 26 Mad., 504.

⁶ Act VI of 1914, s. 2.

⁷ *Dewan Roy v. Sundar Tewary* (1896), 24 Calc., 163.

⁸ *Chakradharudu v. Venkataramayya* (1899), 22 Mad., 457.

or which has been misappropriated or stolen while it was under attachment,¹ is also so cognizable.

“(k) For improper arrest under chapter xxxiv of the Code of Civil Procedure,² or in respect of the issue of an injunction wrongfully obtained under chapter xxxv of that Code;³ or”

It has been held that this does not prevent a suit for improper attachment before judgment.⁴

“(l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause; ⁵

Dower.

“(36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower;

Conjugal rights; custody of minor; divorce. Maintenance. Land revenue, etc.

“(37) a suit for the restitution of conjugal rights,⁶ . . . for the custody of a minor, or for a divorce;

“(38) a suit relating to maintenance; ⁷

“(39) a suit for arrears of land revenue, village expenses or other sums payable to the representative of a village community or to his heir or other successor in title;

Village community.

“(40) a suit for profits payable by the representative of a village community or by his heir or other successor in title after payment of land revenue, village expenses and other sums;

Joint family.

“(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family.” ⁸

¹ *Bishambar Nath v. Gaddar* (1911), 33 All., 306, following *Goma Mahad Patil v. Gokaldas Khimji* (1878), 3 Bom., 74.

² Now Act V of 1908, s. 95, Sch. I, O. 88.

³ Now Act V of 1908, s. 95, Sch. I, O. 89.

⁴ *Ibrahi Rowthen v. Sangaram Shetty* (1902), 26 Mad., 504; see, however, (j), ante, p. 285.

⁵ See *Govind Balkrishna v. Pandurang Vinayak* (1912), 36 Bom., 443.

⁶ Act X of 1914, s. 2, Sch. II.

⁷ *Baldeo Sahai v. Jumna Kunwar* (1901), 28 All., 495; *Muniruddin v. Samirunnissa Bibi* (1917), 40 All.,

52; *Bhagvantrao v. Ganpatrao* (1891), 16 Bom., 267; *Amritomoye Dasia v. Bhagiruth Chundra* (1887), 15 Cal., 164. As to a suit on an agreement, see *Annasami Sastrial v. Ramasami Sastrial* (1913), 38 Mad., 553; *Saminatha Ayyan v. Mangala Thammal* (1896), 20 Mad., 29.

⁸ *Bhatoo Singh v. Ramoo Mahton* (1895), 23 Cal., 189; *Nand Lal v. Harbans Lal* (1920), 2 Lahore L. J., 387; *Rajani Kanta Ghosh v. Ram Nath Roy* (1914), 19 C. W. N., 458; *Mahmud Ali v. Tamis-un-nissa Bibi* (1918), 41 All., 51. As to what is a suit for contribution, see *Satyia Bhusan Banerjee v. Krishna Kali*

A Small Cause Court can try a suit for contribution against joint judgment debtors.¹

"(42) A suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;

"(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue authority on account of an arrear of land revenue or of a demand recoverable as an arrear of land revenue ;

"(43A) a suit to recover property obtained by an act which is, or, save for the provisions of chapter iv of the Indian Penal Code, would be, an offence punishable under chapter xvii of the said Code ;²

"(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force."

As to the investment of certain Courts in Burma with Small Cause Court powers, see *ante*, p. 178.

As to the reference to a High Court of questions as to the jurisdiction of a Small Cause Court, see Act V of 1908, Sch. I, Order 46, rules 6 and 7, *ante*, pp. 275, 276.

It has been held that the following suits lie in a Court of Small Causes :—

- (a) A suit against the Government for the value of an article not collected by the Post Office from the addressee ;³
- (b) a suit for rent with a prayer that the value of improvements be made liable for the claim ;⁴
- (c) a suit for a breach of a covenant not to cut trees ;⁵
- (d) a suit to recover money payable under an award or an application to file an award ;⁶
- (e) a suit for damages for cutting and carrying any grass⁷ or crops ;⁸
- (f) a suit for money collected by distraint in excess of what was due ;⁹
- (g) a suit for damages for use and occupation of land ;¹⁰

Banerjee (1914), 18 C. W. N., 1808 ;
Ant Ram v. Mithan Lal (1917), 40 All., 185.

¹ *Bhairon v. Ram Baran* (1905), 28 All., 292 ; *Bisva Nath Shah v. Naba Kumar Chowdhury* (1888), 15 Cal., 718.

² Act VI of 1914, s. 8.

³ *Mothi Rungaya Chetty v. Secretary of State* (1904), 28 Mad., 218.

⁴ *Karunakara Kurup v. Muniperanan* (1901), 24 Mad., 856.

⁵ *Ramasamy Chettiar v. Orr* (1902),

26 Mad., 176.

⁶ *Simson v. McMaster* (1890), 18 Mad., 844.

⁷ *Krishna Prosad Nag v. Maisuddin Biswas* (1890), 17 Cal., 707.

⁸ *Annamalai v. Subramanyan* (1892), 15 Mad., 298.

⁹ *Karuppanan Ambalam v. Ramasami Chetti* (1897), 21 Mad., 289, see Act IX of 1887, Sch. II, Art. 85, *ante*, pp. 285, 286.

¹⁰ *Kali Krishna Tagore v. Issatan-nissa Khatun* (1897), 24 Cal., 557 ;

(h) suits for contribution other than those specified in articles 41¹ and 42² of the 2nd schedule of the Act.³

A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants.⁴

Law
administered.

Small Cause Courts administer the law which is applicable in the Province in which they are situate.⁵

Insolvency.

As to the investment of a Small Cause Court with jurisdiction in insolvency cases, see *post*, p. 481.

Cantonment
Court of Small
Causes.

When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Cause Courts Act, 1887,⁶ it shall, in its order appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of five hundred rupees, the value of the suits which are to be cognizable by him under that Act.⁷

Appointment
of Additional
Judge of Can-
tonment Court
of Small
Causes.

When the Local Government appoints an additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887 (IX of 1887).⁸

Reduction of
jurisdiction of
Judge.

A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.⁹

Vira Pillai v. Rangasami Pillai (1898), 22 Mad., 149; *Makhan Lall Datta v. Goribulla Sardar* (1890), 17 Cal., 541.

¹ *Ante*, p. 286.

² *Ante*, p. 287.

³ See *Bisva Nath Shah v. Naba Kumar Chowdhary* (1888), 15 Cal., 718; *Fischer v. Turner* (1891), 15 Mad., 155; *Bhairon v. Rambaran*

(1905), 28 All., 292.

⁴ *Parshotam v. Pema Harji* (1895), 21 Bom., 121.

⁵ Cf. *Woodoy Chand Halder v. Gooroo Churn Mojoomdar* (1870), 13 W. R. C. R., 148.

⁶ Act IX of 1887.

⁷ Act XV of 1910, s. 7 (1).

⁸ *Ibid.* s. 8.

⁹ *Ibid.* s. 9.

CHAPTER XXVI.

RANGOON SMALL CAUSE COURT.

THE Rangoon Small Cause Court Act, 1920,¹ established a Establishment of Court.
Small Cause Court in the City of Rangoon.²

That Act contains the following provisions:—

“Section 5. The Court shall be deemed to be a Court Superintendence of Court.
subject to the superintendence of, and subordinate to, the High Court³ within the meaning of the Code of Civil Procedure, 1908,⁴ and the Burma Civil Courts Act, 1922,⁵ and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879.⁶

“Section 6. Subject to the control of the Governor- Appointment of Judges.
General in Council, the Local Government may, from time to time by notification, appoint a person to be Chief Judge and so many other persons as it thinks fit to be Judges of the Court.

“Provided that—

- (1) No person shall be appointed to be Chief Judge unless he is an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861,⁷ or the Government of India Act, 1915.⁸
- (2) No person shall be appointed to be a Judge of the Court unless he is—
 - (a) an advocate of one of the said Courts ; or
 - (b) a Judge of a Court of Civil Judicature of not less than five years' standing ; and
- (3) of the persons so appointed to be Judges, including the Chief Judge, not less than one-third shall be advocates of the Chief Court or of one of the said High Courts.

¹ Bur. Act VII of 1920.

² S. 4.

³ See *ante*, pp. 27, 28.

⁴ Act V of 1908.

⁵ Bur. Act XI of 1922, *ante*, p. 172.

⁶ Act VIII of 1879.

⁷ 24, 25 Vict. c. 104.

⁸ 5, 6 Geo. V. c. 61. See Bur. Act XI of 1922, s. 23.

Additional
Judges.

"Section 7. The Local Government may, whenever it thinks necessary or expedient so to do, appoint an Additional Judge or Judges for a period not exceeding six months.

Rank and pre-
cedence of
Judges.

"Section 8. The Chief Judge, whether permanent or officiating, shall be the first of the Judges in rank and precedence. The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Performance of
duties of absent
Judge.

"Section 9.—(1) During any absence of the Chief Judge the Local Government may appoint any person, having the qualification required by section 6, to act as Chief Judge. During any absence of any other Judge, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person having the qualifications required by section 6, to act as a Judge of the Court.

"(2) Every person appointed under sub-section (1) of this section shall be authorised to perform the duties of the Chief Judge or a Judge of the Court, as the case may be, until the return of the absent Chief Judge or Judge, or the reversion of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be."

Law to be
administered.

"Section 11. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Court shall be dealt with and determined according to the law for the time being administered by the High Court¹ in exercise of its ordinary original civil jurisdiction."²

Local limits of
jurisdiction.

"Section 12.—(1) The Court shall have jurisdiction within the City of Rangoon.

"(2) Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by the Court shall not be tried by any other Court having jurisdiction within the same local limits.³

Pecuniary
jurisdiction.

"Section 13. Subject to the exceptions in section 14 and the provisions of the Code of Civil Procedure, 1908, the Court shall have jurisdiction to try all suits of a civil nature when the amount or value of the subject-matter does not exceed two thousand rupees.

"*Explanation.*—When in any suit the amount claimed is

¹ Bur. Act XI of 1922, s. 28.

² See Act XIII of 1896, s. 13, *ante*, p. 92.

³ The High Court cannot try a Small Cause Court suit: Letters-Patent, cl. 10, *ante*, p. 90.

by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Court shall have jurisdiction to try such suit."

Section 14 is in terms identical with those of section 19 of the Presidency Small Cause Court Act, 1882,¹ except that a suit concerning an act ordered or done by the Governor of Burma in respect of a collision in inland waters, and a suit for compensation for seduction are excluded from the jurisdiction of the Rangoon Small Cause Court.

Suits in which Court has no jurisdiction.

Section 15 (1) is in terms identical with those of section 20 of the Presidency Small Cause Court Act, 1882.²

Court may by consent try suits beyond pecuniary limits of jurisdiction. Saving.

"Section 16. Nothing in this chapter³ shall be deemed to preclude the Court from trying such suit or proceeding as it may from time to time be specially authorised to try by any other enactment."

Section 17 applies to the City of Rangoon, provisions similar to those contained in section 41 of the Presidency Small Cause Court Act, 1882.⁴

Application against person occupying property without leave.

Nothing in this provision shall be deemed to affect any of the provisions of the Rangoon Rent Act, 1920.⁵

"Section 21. Recovery of the possession of any immovable property under this Act shall be no bar to the institution of a suit in the High Court for trying the title thereto."

Suit to try title.

"Section 24.—(1) An appeal shall lie to the High Court Appeals from every decree of the Court when the amount or value of the subject-matter of the suit exceeds one thousand rupees, and from any order passed by the Court in such suit of the kind specified in Schedule I, Order 43, rule 1, clauses (c),⁶ (d),⁷ and (k) of the Code of Civil Procedure, 1908, and from⁸ any order passed under section 104, sub-section (1), clauses (g)⁹ and (h),¹⁰ of that Code.

¹ Act XV of 1882, *ante*, pp. 259, 260.

² *Ibid.*; *ante*, p. 261.

³ Relating to jurisdiction.

⁴ Act XV of 1882, *ante*, pp. 265, 266.

⁵ Bur. Act II of 1920; Bur. Act. VII of 1920, s. 17 (2).

⁶ An order under rule 9 of Order 9 rejecting an application (in a case open to appeal) for an order to set aside a dismissal of a suit.

⁷ An order under rule 18 of Order 9 rejecting an application (in a case

open to appeal) for an order to set aside a decree passed *ex parte*.

⁸ An order under rule 9 of Order 22 refusing to set aside the abatement or dismissal of a suit.

⁹ An order under sec. 95 (compensation for obtaining arrest, attachment or injunction on insufficient grounds).

¹⁰ An order under any provisions of the Civil Procedure Code imposing a fine or directing the arrest or

Revision.

“Section 25. The High Court for the purpose of satisfying itself that a decree or order made in any case by the Court was according to law, may call for the case and pass such order in respect thereto as it thinks fit.

Finality of decrees and orders.

“Section 26. Save as otherwise provided by this Act or by any other enactment for the time being in force, every decree and order of the Court shall be final and conclusive.”

Contempt of Court.

As to the power of the Court, in respect of contempt of Court, see section 29.

Ministerial officers.

As to the Registrar and other ministerial officers, see section 38.

Investment of Registrar with powers to Judge.

“Section 34.—(1) The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed fifty rupees.

“Subject to the orders of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

“For the purposes of this section an application for possession under section 17 shall be deemed to be a suit.”

detention in the civil prison of any person except where such arrest or detention is in execution of a decree.

PART IV.

CIVIL PROCEDURE CODE.

CHAPTER XXVII.

GENERAL PROVISIONS AS TO THE JURISDICTION OF CIVIL COURTS.

THE following provisions of the Civil Procedure Code (Act V of 1908) extend to the whole of British India except the Scheduled Districts.

The provisions of this Code only apply to judicial proceedings. They have no application to administrative proceedings such as inquiries under section 14 of the Legal Practitioners Act (XVIII of 1879).¹

Except when a suit has been instituted or proceedings commenced in the way provided by law, a Court is not seised of it, and cannot make any order in respect of the matter referred to in such suit or proceeding.²

“Section 3. For the purposes of the Civil Procedure Code the District Court is subordinate to the High Court,³ and every Civil Court inferior to that of a District Court, and every Court of Small Causes is subordinate to the High Court and District Court.”

Subordination
of Courts.

As to the subordination of the Rangoon Small Cause Court to the High Court of Burma, see Burma Act VII of 1920, s. 5, *ante*, p. 289.

Except where otherwise provided, the expression “High Court” in the Civil Procedure Code means the highest Civil Court of appeal in any part of British India except the Scheduled Districts.⁴

The expression “District Court” means the principal Civil Court of original jurisdiction in a District.⁵

¹ See *Janakh Kishore* [1917, Pat.], 60.

² As to appeals, see *post*, p. 333.

³ This is not exhaustive: *Purshotam Janardan v. Mahadu Pandu* (1912), 37 Bom., 114; 14 Bom. L. R., 947.

⁴ Act V of 1908, s. 1 (8); Act X of 1897, s. 3 (24).

⁵ Act V of 1908, s. 2 (4). Except where otherwise provided this includes a High Court sitting in the exercise of its ordinary civil jurisdiction; *ibid*.

Court to try
all civil suits
except barred.

"Section 9. The Courts¹ shall (subject to the provisions herein contained) have jurisdiction to try all suits² of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

"*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites and ceremonies."³

Presumption
against
restriction.

A person seeking to oust the jurisdiction of the ordinary Civil Courts must establish his right so to do.⁴ The general presumption is against construing an enactment as ousting or restricting the jurisdiction of the superior Courts. The intention must be expressed in clear terms, not merely implied, but necessarily implied.⁵

Suits of a
civil nature.

Suits of a civil nature include suits to determine or enforce rights to property, status, office or other civil rights.⁶

Dignity or
honorary
office.

They do not include a suit for a mere dignity, even though it be attached to an office,⁷ or for the declaration of the right to an

¹ This includes a High Court: *Nistarini Dasai v. Nundo Lal Bose* (1902), 30 Calo., 369; 7 C. W. N., 353.

² This does not prevent arbitration as to matters which are not of a civil nature: *Raghavendra Ayyaji v. Gururao Raghavendra* (1913), 37 Bom., 442; 15 Bom. L. R., 862.

³ *Venhatachalapati v. Subbarayadu* (1890), 18 Mad., 293; *Krishnasami Chetti v. Virasami Chetti* (1886), 10 Mad., 133; *Krishnasami Ayyangar v. Samaram Singrachariar* (1906), 30 Mad. 158; *Lokenath Mitra v. Dasarathi Tewari* (1905), 32 Calo., 1072; 10 C. W. N., 505. See *Sadagopa Chariar v. Rama Rao* (1907), 34 I. A., 93; 30 Mad., 185; 11 C. W. N., 585; 9 Bom. L. R., 668.

⁴ *Jagannatha Charyulu (Srimath) v. Kutumbarayudu* (1914), 39 Mad., 21; *Vallu Ammal v. Corporation of Madras* (1912), 38 Mad., 41, at p. 43; *Sashi Bhusan Haara v. Eshabar Ali Nasir* (1915), 19 C. W. N., 636; *Secretary of State v. Maharajah of Tippera* (1916), 43 I. A., 303; 44 Calo., 323; 21 C. W. N., 291; 18 Bom. L. R., 1027.

⁵ *Balvant Ramchandra v. Secretary of State* (1905), 29 Bom. 480, at p. 503; 7 Bom. L. R., 497; *Raufi*

Narayan Mandlik v. Dadaji Bapuji Desai (1875), 1 Bom., 523, at p. 529; *Gurushidgavda v. Rudragavdati* (1877), 1 Bom., 531, at p. 538; *Nagar Mal v. Ali Ahmad* (1888), 10 All., 396, at p. 398; *Abdulla Bhai v. Executive Committee, Aden* (1916), 40 Bom., 446; 18 Bom. L. R., 296; *Ram Narain Singh v. Lachmi Narain Deo* (1912), 17 C. W. N., 408; *Bhup v. Ram Lal* (1911), 33 All., 795; *Raoji Fakira v. Dagdu* (1916), 41 Bom., 23; 18 Bom. L. R., 779; *Bhaishankar Nanabhai v. Municipal Corporation of Bombay* (1907), 31 Bom., 604; 9 Bom. L. R., 417; *Vithal v. Raghavendra* (1920), 23 Bom. L. R., 447.

⁶ For instance, a right to hold a market on certain days: *Thakoor Singh v. Sheopershad Ojhar* (1873), 5 N. W. P., 8.

⁷ See *Sunkar Bharti Swami (Sri) v. Sidha Lingayah Charanti* (1843), 3 M. I. A., 198; 6 W. R. P. C., 39; S. C. on remand (1845), 2 Bom., 478; *Sadagopa (Striman) v. Kristna Tatachariyar* (1863), 1 Mad. H. C., 301; *Narayan Vithu Parab v. Krishnaji Sadashiv* (1885), 10 Bom., 233; *Karuppa Goundan v. Kolanihayana* (1883), 7 Mad., 91; *Gadigeya v. Basaya* (1910), 34 Bom., 455; 12 Bom.

honorary office which may be rendered nugatory by the action of a Society.¹

Civil Courts have jurisdiction to entertain a suit for an honour, if it is claimed as attached inseparably to an office as part of its emoluments and not simply awarded to its holder as a mark of respect which might be extended to any person to whom the same degree of respect is due.²

Civil Courts have no jurisdiction to determine the right of an honour which emanates from the Crown, or from the Government.

Questions of caste, i.e. questions relating to matters which affect the internal autonomy of a caste or its social relations,³ and questions of religious usages and institutions can only be determined by the Civil Courts where their determination is necessary for the purpose of deciding a suit "of a civil nature."

The Court cannot determine caste disputes, where no right of property or to an office is involved.⁴ It will not interfere when an individual has been excluded from caste, or has been excommunicated or otherwise deprived of religious rights by an authority in that behalf, unless the exclusion is contrary to natural justice,⁵ as, for instance, where he has been condemned without having an opportunity of being heard.⁶ The loss of a mere social right does not justify the interference of the Court.⁷

The principle was laid down by CHANDARVARKAR, J., in *Nathu Velji v. Keshwaji* (1901), 26 Bom., 174; 8 Bom. L. R., 718, as follows:—

"A suit raising a caste question must fall in one of three classes :

"I. It may be a suit brought by a member of a caste complaining of his exclusion from it and asking for a declaration that the expulsion is illegal, and that he is still a member of the caste, and as such entitled to its social privileges. The Civil Courts have no jurisdiction to entertain such a suit.

"II. It may be a suit brought by a member of a caste expelled from

L. R., 358; *Raghawendra Ayyaji v. Gururao Raghawendra* (1913), 37 Bom., 442; 15 Bom. L. R., 362; *Andaniswami v. Totadswami* (1920), 45 Bom., 590; 28 Bom. L. R., 75.

¹ *Maharaj Narain Sheopuri v. Shashi Shekhareshwar Roy* (1915), 37 All., 813.

² *Rungachariar (Sri) v. Rungasami Battachar* (1908), 82 Mad., 291; *Andaniswami v. Totadswami* (1920), 45 Bom., 590; 28 Bom. L. R., 75.

³ *Appaya v. Padappa* (1898), 23 Bom., 122, at p. 180; *Anandav Bhikaji Phadke v. Shankar Daji Charya* (1888), 7 Bom., 328, at pp. 328, 329.

⁴ *Jethabhai Narsey v. Chapsey Cooverjee* (1909), 34 Bom., 467; 11 Bom. L. R., 1014; *Dayaram v. Jethabhat* (1895), 20 Bom., 784.

⁵ See *Lalji Shamji v. Walji Wardhaman* (1895), 19 Bom., 507.

⁶ See *Appaya v. Padappa* (1898), 23 Bom., 122; *Keshavlal v. Girja (Bai)* (1899), 24 Bom., 18; *Jagannath Churn v. Akali Dassia* (1898), 21 Cal., 463; *Ganapati v. Bharati Swami* (1894), 17 Mad., 222; *Vallabha v. Madhusudan* (1889), 12 Mad., 495; *Krishnasami Chetti v. Virasami Chetti* (1886), 10 Mad., 133.

⁷ *Raghunath Damodhar v. Janardhan Gopal* (1891), 15 Bom., 599; *Mayashankar v. Harishankar* (1886), 10 Bom., 661; *Kanji Barla v. Arjun Shamji* (1898), 18 Bom., 115; *Sudharam Patar v. Sudharam* (1889), 3 Ben. L. R. (A. C.), 91; 11 W. R. C. R., 457; *Rajkisto Majee v. Nobae Seal* (1864), 1 W. R. C. R., 351.

it, for a declaration that the excommunication is illegal and that he is entitled to certain rights of property or office as a member of the caste. The Civil Courts have jurisdiction to entertain such a suit, if the result of the excommunication is to deprive a man of his *civil rights*; but even here the jurisdiction is limited; all that the Court can inquire into is whether the order of excommunication was passed *bonâ fide* in accordance with natural justice. The inquiry is to be conducted from the point of view of the caste and not of the Court into the reasonableness of the rule for a breach of which the order of excommunication was passed. If these conditions are fulfilled, the Court must hold that the caste acted within its powers as a domestic tribunal with whose discretion it will not interfere.

"III. It may be a suit brought by an expelled member for damages on account of loss of caste or character. The Civil Courts have jurisdiction in such a suit; but the jurisdiction is subject to the law that a libel to a man's position in his caste can give them no right to claim damages from any of his caste fellows if they have acted *bonâ fide* for the protection of their caste interests in the discharge of their caste duty."

In the Bombay Presidency (outside the island of Bombay), except in the Scheduled districts,¹ the Courts are prohibited from deciding caste² questions,³ except in a suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or unjustifiable conduct of the other party.⁴ The principle is, would the taking cognizance of the matter in dispute be an interference with the autonomy, *i.e.* the internal management of the caste?⁵

Religious rites. Suits as to religious rites and ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature.⁶

A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites and ceremonies.⁷

¹ Act XV. of 1874, s. 5.

² The expression "caste" is not here confined to Hindus, but it comprises any well-defined native community governed for certain internal purposes by its own rules and regulations: *Abdul Kadir v. Dharma* (1895), 20 Bom., 190.

³ *Murar Daya v. Nagria Ganeshtia* (1869), 6 Bom. H. C. A. C., 17.

⁴ Bom. Reg. II of 1827, s. 21. See *Girdhar v. Kalya* (1880), 5 Bom., 88; *Nemchand v. Savaichand* (1866), 5 Bom., 84, note; *Pragji Kalan v. Govind Gopal* (1887), 11 Bom., 584.

⁵ *Murari v. Suba* (1882), 6 Bom., 725, at p. 727; *Anandrav Bhikaji Phadke v. Shankar Daji Charya*

(1888), 7 Bom., 323, at pp. 323, 329.

⁶ *Vasudev v. Vamnaji* (1880), 5 Bom., 80; *Lokenath Misra v. Dasarathi Tewari* (1905), 32 Cal., 1072; 10 C. W. N., 505.

⁷ *Venkatachalapati v. Subbarayadu* (1890), 18 Mad., 293; *Krishnasami Chetti v. Virasami Chetti* (1886), 10 Mad., 183; *Krishnasami Ayyangar v. Samaram Singrachariar* (1906), 30 Mad., 158. See *Sadagopa Chariar v. Rama Rao* (1907), 34 I. A., 98; 30 Mad., 185; 11 C. W. N., 585; 9 Bom. L. R., 663; *Narasimma Chariar v. Krishna Tata Chariar* (1871), 6 Mad. H. C., 449; *Kooni Meera Sahib v. Mahomed Meera Sahib* (1906), 30 Mad., 15.

In a Bengal case¹ the following has been said on this subject: "It may be conceded that suits in which the principal question relates to the performance of religious rites or ceremonies are not suits of a civil nature, and to the same category belong suits for vindication of a mere dignity attached to an office.² But it is well settled that suits in which the principal question relates to the right to an office, are suits of a civil nature, and not the less so, because the right claimed may depend upon the decision of questions as to religious rites or ceremonies or even religious tenets.³ Now suits for offices of a religious character, that is, those in which the title to the office is dependent upon the performance of religious rites and ceremonies, may be divided into two classes, namely, *first*, religious offices to which fees are appurtenant as of right, and *secondly*, religious offices to which no fees are attached, but which entitle the holder thereof to receive such gratuities as may be paid to him.

In the former class of cases, that is, in respect of offices to which fees are attached, there is no doubt that a suit will lie for a declaration that the office is vested in the plaintiff.⁴ As regards religious offices of the second class, there has been some divergence of judicial opinion upon the question whether a suit will lie for an office to which no fees are attached. In Bengal the view has been maintained that a suit by a person claiming to be entitled to a religious office of this description against an usurper for declaration of his right to the office is a suit of a civil nature maintainable in a Civil Court.⁵ The contrary view has apparently been maintained in Madras.⁶ In Bombay, a distinction has been made between an office which is attached to a particular temple or place, and an office which is entirely personal in character. As regards the former class it has been held that the suit is maintainable.⁷ As regards the latter, the balance of authority supports the view that the suit is not maintainable,⁸ though the contrary view was maintained in *Hashim (Sayad) v. Husein Sha.*⁹ This distinction between local and personal offices has also been recognised in Allahabad.¹⁰

¹ *Gourmoni Debi v. Chairman of Panikhati Municipality* (1910), 14 C. W. N., 1057, at pp. 1061, 1062.

² *Ante*, p. 294.

³ *Tiru Krishnama Chariar v. Krishnasawmi Tata Chariar* (1879), 6 I. A., 120; 2 Mad., 62; s.c. on remand, *Krishnasami v. Krishnama Chariar* (1882), 5 Mad., 313.

⁴ *Muhammad v. Ahmed (Sayad)* (1861), 1 Bom. H. C. App., 18; *Narasimma Chariar v. Krishna Tata Chariar* (1871), 6 Mad. H. C., 449.

⁵ *Mamat Ram v. Bapu Ram* (1887), 15 Calc., 159; *Kali v. Gouri* (1890), 17 Calc., 906; *Dinonath v. Pratap Chandra* (1899), 27 Calc., 30; 4 C. W. N., 79.

⁶ *Tholappalu v. Venkata* (1895), 19

Mad., 62; *Subbaraya v. Vedantachariar* (1904), 28 Mad., 28.

⁷ *Limba v. Rama* (1888), 13 Bom., 548; *Gursangaya v. Tamana* (1891), 16 Bom., 281. The right of hereditary priest to a family was upheld in *Ghelabhai v. Hargowan* (1911), 86 Bom., 94; 18 Bom. L. R., 1171. See *Girjashankar v. Murlidhar* (1920), 45 Bom., 234; 22 Bom. L. R., 1202.

⁸ *Murari v. Suba* (1882), 6 Bom., 725; *Gadigeya v. Basaya* (1910), 34 Bom., 455; 12 Bom. L. R., 358.

⁹ (1888), 13 Bom., 429.

¹⁰ *Chunnu Datt Vyas v. Babu Nandan* (1910), 82 All., 527; *Barsati v. Chamru* (1907), 29 All., 683.

A suit lies in the following, amongst other, cases :

- (a) to determine a right to give offerings at a temple ; ¹
- (b) to restrain the removal of an object of worship ; ²
- (c) to restrain the removal of religious marks in a temple, or unjustifiable changes in the character of a temple as a religious institution ; ³
- (d) to assert an exclusive right to worship in a temple ; ⁴
- (e) to assert a right of access to the inner shrine of a temple ; ⁵
- (f) to assert a right to officiate exclusively as a priest on the occasion of the cremation of all dead bodies brought to a particular place ; ⁶
- (g) to assert the right to administer religious rites to pilgrims ; ⁷
- (h) to assert a right to fees on marriages ; ⁸
- (i) to assert a right to certain honours as high priest of a temple ; ⁹
- (j) to assert a right to a certain office in a temple ; ¹⁰
- (k) to assert a right to enter a prayer hall belonging to a certain religious fraternity ; ¹¹
- (l) to recover vessels borrowed by another division of the caste ; ¹²
- (m) to enforce a right to perform a festival in a temple ; ¹³
- (n) to assert a right of worship and to go in procession ; ¹⁴
- (o) by a pujari to recover from the temple servants offerings made by devotees ; ¹⁵
- (p) to prevent interference with the priests' ministrations ; ¹⁶
- (q) to assert a right to recite prayers in connection with a burial ; ¹⁷
- (r) to assert a right to worship in a mosque. ¹⁸

¹ *Vengamuthu v. Pandaveswara Gurukul* (1882), 6 Mad., 151.

² *Dhurrum Singh Mohunt v. Kissen Singh* (1881), 7 Cal., 767 ; 9 C. L. R., 410.

³ *Krishnasami Ayyangar v. Samaram Singrachariar* (1906), 30 Mad., 158.

⁴ *Anandrav Bhikaji Phadke v. Shankar Daji Charya* (1888), 7 Bom., 828 ; *Krishnasami v. Krishnama Chariar* (1882), 5 Mad., 318.

⁵ *Venkatachalapati v. Subbarayadu* (1890), 18 Mad., 298.

⁶ *Gourmoni Debi v. Chairman of Panihati Municipality* (1910), 14 C. W. N., 1057. See *Hira Pandey v. Bachu Pandey* (1916), 1 Pat. L. J., 381.

⁷ *Ramasawmy Aiyar v. Venkata Achari* (1868), 9 M. I. A., 348 ; 2 W. R. P. O., 21.

⁸ *Gursangaya v. Tamana* (1891), 16 Bom., 281.

⁹ *Archakam Srinivasa Dikshatulu v. Udayagiri Anantha Charlu* (1869), 4 Mad. H. C., 849.

¹⁰ *Srinivasa v. Tiruvengada* (1888), 11 Mad., 450.

¹¹ *Jagannath Churn v. Akali Dassia* (1898), 21 Cal., 463.

¹² *Pragji Kalan v. Govind Gopal* (1887), 11 Bom., 534.

¹³ *Pankajammal v. Secretary of State* (1916), 40 Mad., 1108.

¹⁴ *Waman Balwant v. Balu Harshet* (1919), 44 Bom., 410 ; 22 Bom. L. R., 809. A mere right to be carried in a procession does not give a right of action : *Andaniswami v. Totadswami* (1920), 45 Bom., 590 ; 23 Bom. L. R., 75.

¹⁵ *Sakharam Daji v. Ganu Raghu* (1920), 45 Bom., 688 ; 23 Bom. L. R., 125.

¹⁶ *Girjashankar v. Murtidhar* (1920), 45 Bom., 284 ; 22 Bom. L. R., 1202.

¹⁷ *Kooni Meera Sahib v. Mahomed Meera Sahib* (1906), 30 Mad., 15.

¹⁸ *Fusul Karim v. Mowla Buksh (Haji)* (1891), 18 I. A., 59 ; 18 Cal., 448.

In the following cases no suit lies :

- (a) A suit to restrain the reading of a service called *Kutbah* by the defendants in their own mosque; ¹
- (b) a suit to declare a right to perform religious services in a graveyard; ²
- (c) a suit for an account of expenditure on religious duties; ³
- (d) to assert a right to be carried in a procession in a cross-palanquin.⁴

The Courts cannot question acts of State, i.e. acts of Sovereignty. ⁵ Acts of State.

A seizure by arbitrary power on behalf of the Crown of the dominions and of property of ⁶ or in ⁷ a neighbouring State is an act of State, and the Civil Courts have no jurisdiction with regard to it.

An act of a subordinate of Government without authority from the head of his State is not an act of State,⁸ unless it has been ratified.⁹

An act of Government under colour of a legal title to property is not an act of State.¹⁰

The Civil Courts have jurisdiction to determine whether a grant of land, alleged to have been made by an officer on behalf of the Crown, is binding on the Crown.¹¹

The Government of India, as represented by the Secretary of State Responsibility for India in Council,¹² is responsible for the acts of itself and of its servants, otherwise than in exercise of the Sovereign power which it possesses,¹³ but is not liable for actionable wrongs committed by officers in the performance of duties imposed upon them by the Legislature.¹⁴

If a party had a right of action against the East India Company, that right could not be taken away by any Act of the Indian Legislature after the possessions of the Company were vested in the Crown.¹⁵

¹ *Maine Molar v. Islam Amanath* (1891), 15 Mad., 355.

² *Ramrao v. Rustum Khan* (1901), 26 Bom., 198; 8 Bom. L. R., 717.

³ *Trimbak Gopal v. Krishnarao Pandurang* (1909), 33 Bom., 887.

⁴ *Andaniswami v. Toladswami* (1920), 45 Bom., 590; 23 Bom. L. R., 75.

⁵ *Bir Bikram Deo v. Secretary of State* (1912), 39 I. A., 81; 39 Calc., 615; 16 O. W. N., 862; 14 Bom. L. R., 812; *Secretary of State v. Kamachee Boye Sahaba* (1859), 7 M. I. A., 476. See *East India Company v. Syed Ally* (1827), 7 M. I. A., 555; *Sultan Sanî (Shekh) v. Ajmodin (Shekh)* (1892), 20 I. A., 50; 17 Bom., 431.

⁶ *Secretary of State v. Kamachee Boye Sahaba* (1859), 7 M. I. A., 476; *Saligram (Rajah) v. Secretary of State* (1872), 1 A. Sup., vol. 119; 12 B. L. R. P. O., 167; 18 W. R. C. R., 389.

⁷ *Bhagwan Singh v. Secretary of State* (1874), 2 I. A., 38.

⁸ *Mills v. Modes Pestonjee Khoor-sedjee* (1888), 2 M. I. A., 37; *Bombay Burmah Trading Corporation v. Mirza Mahomed Ali Sheragee* (1878), 10 B. L. R., 345; 19 W. R. C. R., 128.

⁹ *Zulef Ali (Mir) v. Yeshvadabai Saheb* (1872), 9 Bom. H. C., 314.

¹⁰ *Forester v. Secretary of State* (1872), 1 A. Sup., vol. 10; 12 B. L. R., 120; 18 W. R. C. R., 849. See *Hari Sadashiv v. Ajmudin (Sheik)* (1886), 11 Bom., 285.

¹¹ *Secretary of State v. Kasturi Reddi* (1902), 26 Mad., 268.

¹² Act V of 1908, s. 79.

¹³ See *Peninsular and Oriental Steam Navigation Company v. Secretary of State* (1861), 5 Bom. H. C. App. I; *Secretary of State v. Cock-craft* (1914), 39 Mad., 351; 5, 6 Geo. V. c. 61, s. 32.

¹⁴ *Evans v. Secretary of State* (1919), 2 Lahore L. J., 7.

¹⁵ *Secretary of State v. Moment* (1912), 40 I. A., 48; 40 Calc., 391;

Liability of
Governor-
General, etc.

A suit does not lie against the Governor-General or a Governor, or a Political Agent¹ for acts done in their political capacity.

As to the exemption of the Governor-General, each Governor, and each of the members of their respective executive councils from the jurisdiction of a High Court, see 5, 6 Geo. V. c. 61, s. 110, *ante*, p. 81.

Interference
with executive.

A Civil Court cannot interfere with the order of a Revenue,² or other executive authority³ which is acting within its powers. When such order is *ultra vires* it may be treated as a nullity,⁴ or declared to be such,⁵ and where the order of a Revenue Court has been brought about by fraud a Civil Court can make a declaration to that effect in favour of a person who was not a party to the Revenue proceedings.⁶

Determination
by Revenue
Court.

Unless otherwise provided, a suit will not lie in a Civil Court, when a Revenue Court or other tribunal having jurisdiction has determined the question,⁷ nor can a Civil Court determine a question such as the apportionment of Land Revenue which is specially confided to a Revenue Court.⁸ See *post*, p. 616.

Special
Tribunal.

Where a special tribunal,⁹ out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine these questions is exclusive.¹⁰ It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ousting of the jurisdiction of the ordinary Law Courts, for they never had any.¹¹

17 C. W. N., 169; 15 Bom. L. R., 27. In that case the Judicial Committee held that s. 41 (6) of Bur. Act IV of 1898, which enacts that no Civil Court is to have jurisdiction to determine a claim to any right over land as against Government is *ultra vires*. See *Damodar v. Secretary of State* (1921), 45 Bom., 1161; 28 Bom. L. R., 492.

¹ *Inhabitants of Mahalingpore v. Anderson* (1870), 7 B. L. R., 452, note.

² *Nikunja Rani Chowdhurani v. Secretary of State* (1915), 43 Calc., 230; 20 C. W. N., 504; *Chiranjil Lal v. Kehri Singh* (1910), 83 All., 1; *Radha Kanta Aich v. Secretary of State* (1918), 28 C. W. N., 265, at p. 272. See *Omrinissa Bibee v. Dilawar Ally Khan* (1884), 10 Calc., 850.

³ See *Kamta Prasad v. Ahmad (Saiged)* (1909), 81 All., 878; *Abdul Rahim v. Municipal Commissioner of Bombay* (1918), 42 Bom., 462; 20 Bom. L. R., 987; *Nur Mahomed v. Surat City Municipality* (1919), 44

Bom., 738.

⁴ *Nikunja Rani Chowdhurani v. Secretary of State* (1915), 43 Calc., 230; 20 C. W. N., 504.

⁵ *Secretary of State v. Fahamidunnissa Begum (Srimati)* (1889), 17 I. A., 40; 17 Calc., 590; s.o. in Court below, *Fahamidunnissa Begum v. Secretary of State* (1886), 14 Calc., 67.

⁶ See *Mahadeo Prasad v. Takia Bibi* (1902), 25 All., 19.

⁷ *Shiva Prakash v. Karna* (1913), 35 All., 464; *Baljit v. Mahipat* (1918), 41 All., 208.

⁸ See *Debi Saran Singh v. Rajbans Nath Dubey* [1918, Pat.], 184.

⁹ See *Valli Ammal v. Corporation of Madras* (1912), 88 Mad., 41.

¹⁰ *Icharan Singh v. Nilmoney Balidar* (1908), 35 Calc., 470, at p. 478; 12 C. W. N., 686, at p. 688; *Bhandi Singh v. Ramadhin Roy* (1905), 10 C. W. N., 991.

¹¹ *Bhaishankar Nanabhai v. Municipal Corporation of Bombay* (1907), 81 Bom., 604, at p. 609; 9 Bom. L. R., 417. See *Bholaram Chowdhury v. Corporation of Calcutta* (1909), 86 Calc.,

A Civil Court may determine whether a municipality is acting in Municipality. excess of its powers,¹ and may restrain them from so doing, but when jurisdiction has been conferred upon a special tribunal, as in the case of municipal elections, for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot be exercised concurrently by the ordinary Court;² but where the special tribunal has acted in disregard of the provisions of the enactment constituting it, or has otherwise acted *ultra vires*, the jurisdiction of the Civil Court is not ousted.³

Thus a Civil⁴ or Criminal⁵ Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing a house tax, or to interfere with the exercise by a municipality of its power to purchase land for the purpose of widening a street,⁶ or to order particular works to be done,⁷ or to order the return of a tax duly levied.⁸

The Court can set aside an assessment of tax under section 85, cl. (a), of the Bengal Municipal Act,⁹ made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the municipality.¹⁰ It can by suit deal with irregularities at an election,¹¹ and can order the return of a tax which has been unduly levied.¹²

A suit does not lie for the purpose of determining questions the Bombay adjudication of which is confided to the Collector by the Bombay hereditary offices. Hereditary Offices Act, 1874.¹³ A Civil Court can declare the plaintiff's

671; 13 C. W. N., 740; *Nataraja Mudaliar v. Municipal Council of Mayavaram* (1911), 36 Mad., 120.

¹ *Ataul Huq v. Chairman, Manick-tala Municipality* (1920), 48 Calc., 378; *Chairman, Giridih Municipality v. Sriish Chandra Mozumdar* (1908), 35 Calc., 859; 12 C. W. N., 709; *Brindabun Chunder Roy v. Municipal Commissioners of Serampore* (1878), 19 W. R. C. R., 309.

² *Ichharan Singh v. Nilmoney Balidar* (1908), 35 Calc., 470; 12 C. W. N., 686; *Balaant Ramchandra v. Secretary of State* (1905), 29 Bom., 480, at p. 503; 7 Bom. L. R., 497.

³ See *Ganesh Mahadev v. Secretary of State* (1918), 48 Bom., 221; 21 Bom. L. R., 27; *Bhaishankar Nana-bhai v. Municipal Corporation of Bombay* (1907), 31 Bom., 604; 9 Bom. L. R., 417.

⁴ *Morar v. Borsad Town Municipality* (1900), 24 Bom., 607; 2 Bom. L. R., 417.

⁵ *Municipality of Wai v. Krishnaji Gangadhar* (1898), 28 Bom., 446.

⁶ *Ramchandra (Shastri) v. Ahmedabad Municipality* (1900), 24 Bom.,

600; 2 Bom. L. R., 395.

⁷ *Duke v. Rameswar Malia* (1899), 28 Calc., 811; 3 C. W. N., 508.

⁸ *Kamayya v. Leman* (1878), 2 Mad., 37.

⁹ Ben. Act III of 1884, as amended by Ben. Act IV of 1894.

¹⁰ *Kameshwar Pershad v. Chairman of the Bhabua Municipality* (1900), 27 Calc., 849; *Navadip Chandra Pal v. Purnananda Saha* (1898), 3 C. W. N., 78.

¹¹ *Sabhapati Singh v. Abdul Gaffur* (1896), 24 Calc., 107. See *Abdur Rahim v. Municipal Board of Koil* (1899), 22 All., 143.

¹² *Leman v. Damodaraya* (1876), 1 Mad., 158. See, however, *Manessur Dass v. Collector of Chapra* (1876), 1 Calc., 409.

¹³ Bom. Act III of 1874. See *Chinto Abaji Kulkarni v. Lakshmidai* (1878), 2 Bom., 375; *Jivaji Sambhaji v. Fakir Sabaji* (1912), 36 Bom., 420; 14 Bom. L. R., 395; *Govind Sitaram v. Bapuji Mahadeo* (1898), 18 Bom., 516; *Parsha v. Lagmya Shan* (1898), 13 Bom., 83; *Bhiva v. Vitthya* (1900), 25 Bom., 186; 2 Bom. L. R., 869;

right to the status of watandar,¹ and can try the question whether a watandar is entitled to receive perquisites from his rayut.²

As to a reference to a panchayat, see *Mahadu Kashiba v. Krishna Tatya Mahar* (1922), 47 Bom., 95; 24 Bom. L. R., 917.

The following suits are maintainable:

(a) for a declaration that the plaintiff is the nearest heir of a deceased representative watandar;³

(b) to establish a share in the emoluments of a watan;⁴

(c) for a declaration that an alienation of watan property is void.⁵

As to the bar of certain suits see Bombay Revenue Jurisdiction Act (X of 1876), s. 4 (a), *post*, pp. 681, 682.

As to the duty of the Civil Court to remove an attachment on watan property assigned as remuneration of watandar, see Bombay Act III of 1874, s. 10, as amended by Bombay Act V of 1886.⁶

Madras hereditary village offices.

By section 21 of the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), "no Civil Court can take into consideration or decide any claim to succeed to any of the hereditary village offices specified in section 8 of that Act, or any question as to the rate or amount of the emoluments of any such office."⁷

Proviso in questions of jurisdiction.

"Provided that, if, in any suit instituted under that Act, the defendant has pleaded before the Collector that a Revenue Court has no jurisdiction to entertain the suit, on the ground that no emoluments, as defined in the Act, appertain to the office in respect of which the suit is brought, and if, on appeal preferred from the decree in such suit, the appellate authority has decided adversely to such plea, the defendant may, within six months from the date of the appellate decree, institute a suit in a Civil Court to set aside such appellate decree on the said ground, and on that ground only."

This section is no bar to a suit for the recovery of land.⁸

The Act does not apply to offices in proprietary estates.⁹

The Act only takes away the jurisdiction of Civil Courts when jurisdiction has been conferred on Revenue Courts.¹⁰

Khando Narayan Kulkarni v. Apaji Sadashiv Kulkarni (1877), 2 Bom., 370; *Balkrishna Chimnaji v. Balaji Ramchandra* (1884), 9 Bom., 25; *Raoji v. Genu* (1896), 22 Bom., 344.

¹ *Ramchandra Dabholkar v. Anant Sat Shenvi* (1888), 8 Bom., 25; *Raoji Fakira v. Dagdu* (1916), 41 Bom., 28; 18 Bom. L. R., 779.

² *Vishnu Hari Kulkarni v. Ganu Trimbak* (1888), 12 Bom., 278.

³ *Rahim Khan v. Dadamiya* (1909), 34 Bom., 101; *Shankar v. Dattatraya* (1915), 40 Bom., 55; 17 Bom. L. R., 725; *Balkrishna Chimnaji v. Balaji Ramchandra* (1884), 9 Bom., 25.

⁴ *Moheyodin v. Chhotibibi* (1880), 5 Bom., 578.

⁵ *Dattatraya Keshav v. Tukaram Baghu* (1920), 45 Bom., 1141; 23

Bom. L. R. --

⁶ *Gopal Hanmant Gumaste v. Sakharam Govind* (1879), 4 Bom., 254.

⁷ Mad. Act III of 1895, s. 21; see *Audirasu Veerayya v. Audirasu Sangayya* (1910), 34 Mad. 177; *Keeriram Narasimhulu v. Narasimhulu Patnaidu* (1906), 80 Mad., 126, distinguishing *Ravutha Koundan v. Muthu Koundan* (1888), 13 Mad., 41; *Secretary of State v. Subbarayudu* (1912), 36 Mad., 559. As to a suit before the Collector, see s. 13 of the Act.

⁸ *Gavara Ramanna v. Adabala Rattayya* (1909), 33 Mad., 235.

⁹ *Veerabadrachari v. Suppiah Achari* (1909), 33 Mad., 488.

¹⁰ *Muvvula Seetham Naidu v. Doddi Rami Naidu* (1909), 33 Mad., 208.

The Madras Hereditary Offices Regulation, 1881 (Madras Regulation VI of 1881), which now applies only to certain Scheduled Districts,¹ provides² that claims to the possession of or to the succession to, hereditary village or other offices in the Revenue and Police departments, or to the enjoyment of any of the emoluments annexed thereto shall not be cognizable by the ordinary Courts of Judicature.

A Civil Court has no jurisdiction over a claim in Burma to the office of headman or other village officer, or in respect of any injury caused by exclusion from such office, or power to compel the performance of the duties, or a division of the emoluments thereof.³

In the following matters (amongst others) the jurisdiction of the Civil Courts is expressly excluded.

(a) Matters decided by a Settlement Court under the Santhal Parganas Settlement Regulation.⁴ Suits lie to contest a settlement officer's decision where only the rights of Zamindars and other proprietors as between themselves are concerned.⁵ Santhal Parganas Settlement.

(b) Matters which the Local Government or a Revenue officer is empowered by the Punjab Alienation Act, 1900,⁶ to dispose of. No Civil Court can take cognizance of the manner in which the Local Government or any Revenue officer exercises any power vested in it or in them under that Act. Punjab Alienation.

(c) Questions regarding the rates or amounts of the quit-rents or payments under section 27 enforced or levied under the Madras Proprietary Estates Village Service Act, 1894.⁷ Proprietary Estates Village Service.

(d) A proceeding by a District Collector under the Limited Proprietors Act, 1911.⁸ The Secretary of State or any officer of Government shall not be made a party to any suit or be liable in respect of anything done or purporting to be done under that Act in good faith.⁹ Madras Limited Proprietors.

(e) As to the amount of any compensation payable, or of any abatement of rent allowable, under the Burma Ferries Act,¹⁰ or under section 84 of the Northern India Ferries Act, 1878.¹¹ Ferries in Burma. Northern India ferries.

(f) In respect of an act done in the exercise of any power conferred by the Central Provinces Registration Act, 1916.¹² Registration.

(g) An assessment made under the Indian Income Tax Act, 1922.¹³ Income Tax.

(h) A decision passed or act done by the Collector under the Indian Treasure Trove Act, 1878.¹⁴ Treasure Trove.

(i) An assessment of a rate imposed under the United Provinces Local Rates Act, 1914.¹⁵ U. P. Police Rates.

(j) Complaint of a patwari against a landholder or the tenant of a Complaints of patwaris.

¹ Mad. Act III of 1895, s. 2.

² S. 8. Cf. *Palamalai v. Shanmuga* (1894), 17 Mad., 302; *Pichuwayyan v. Vilakkudayan* (1897), 21 Mad., 134.

³ Bur. Act VI of 1907, s. 26.

⁴ Reg. III of 1872, as amended by Reg. III of 1908, s. 4.

⁵ Reg. III of 1908, s. 9, *Ramranjan Chuckerbutty v. Nanda Lal Laik* (1895), 22 Cal., 473.

⁶ Act XIII of 1900, s. 21.

⁷ As substituted for Mad. Act II of 1894, s. 33, by s. 14 of Mad. Act III of 1914.

⁸ Mad. Act IV of 1911.

⁹ *Ibid.* s. 14.

¹⁰ Bur. Act II of 1898, s. 84.

¹¹ Act XVII of 1878, s. 84.

¹² C. P. Act I of 1916, s. 20.

¹³ Act XI of 1922, s. 67.

¹⁴ Act VI of 1878, s. 17.

¹⁵ U. P. Act I of 1914, s. 14.

village for refusing to remunerate his labours, or against a Collector on account of any decision passed by him in pursuance of the Bengal Patwaris Regulation, 1817.¹

Railway
Commission.
Hazara Forests.
Santhal
Parganas
Settlement.

(k) Certain matters cognizable by the Railway Commission.²

(l) Certain matters provided for in the Hazara Forest Regulation, 1898.³

In the Santhal Parganas there is during the settlement a bar of jurisdiction of Civil Courts in regard to—

(a) any land or any interest in, or arising out of land, or

(b) the rent or profits of any land, or

(c) any village headship or other office connected with any land,⁴

but the officer empowered to try such suits may re-transfer them to a Civil Court established under the Bengal, Agra, and Assam Civil Courts Act, 1887 (XII of 1887).⁵

Ajmere
Talukdars.

On the publication of a declaration under section 4 of the Ajmere Talukdars' Relief Regulation, 1872 (IV of 1872), all proceedings in respect of debts or liabilities mentioned in the application under section 3 of the Regulation which may then be pending in any Civil Court in British India are barred; and all processes, executions and attachments for, or in respect of, such debts or liabilities become null and void.⁶

Oudh
Talukdars.
Exclusion of
jurisdiction.

There is a similar provision in the Oudh Talukdars' Relief Act, 1870.⁷

The following enactments also exclude the jurisdiction of the Civil Courts:—

The Bombay Revenue Jurisdiction Act, 1876, see *post*, chap. lviii.

The Benares Family Domain Act, 1904.⁸

The Burma Land and Revenue Act, 1876.⁹

The Upper Burma Land and Revenue Regulation, 1889,¹⁰ *post*, pp. 640, 641.

Estates Partition Act, 1897.¹¹

The Punjab Land Revenue Act, 1887, s. 158.¹²

Assam Land and Revenue Regulation, 1886.¹³

Bengal Land Revenue Sales Act, 1859.¹⁴

Bombay Land Revenue Code, 1879.¹⁵

Central Provinces Land Revenue Act, 1917.¹⁶

Coorg Land and Revenue Regulation, 1899.¹⁷

Madras Revenue Recovery Act, 1864.¹⁸

Bengal Public Demands Recovery Act, 1913.¹⁹

Bombay District Municipal Act, 1901.²⁰

Bengal Municipal Act, 1884.²¹

¹ Ben. Reg. XII of 1817, s. 34.

² Act IX of 1890, s. 47.

³ Reg. III of 1911, s. 35.

⁴ Reg. III of 1908, s. 2, amending Reg. III of 1872, s. 5.

⁵ S. 5A added to Reg. III of 1872 by Reg. III of 1908, s. 2.

⁶ Reg. IV of 1872, s. 5.

⁷ Act XXIV of 1870, s. 4.

⁸ U. P. Act III of 1904, s. 9.

⁹ Act II of 1876, *post*, pp. 639, 640.

¹⁰ Reg. III of 1889, *post*, pp. 640, 641.

¹¹ Ben. Act V of 1897, *post*, p. 625.

¹² Act XVII of 1887, *post*, pp. 651, 652.

¹³ Reg. I of 1886.

¹⁴ Act XI of 1859, *post*, pp. 622, 623.

¹⁵ Bom. Act V of 1879.

¹⁶ C. P. Act II of 1917, *post*, pp. 648-649.

¹⁷ Reg. I of 1899, *post*, pp. 646-648.

¹⁸ Mad. Act II of 1864, *post*, p. 648.

¹⁹ Ben. Act III of 1913, *post*, p. 627.

²⁰ Bom. Act III of 1901, *post*, p. 466.

²¹ Ben. Act III of 1884, *post*, p. 463.

United Provinces Municipalities Act, 1916.¹
 Khoti Settlement Act, 1880.²
 Gujarat Taluqdars Act, 1888.³
 Ajmere Irrigation Regulation, 1887.⁴
 Bengal Embankments Act, 1855.⁵
 Punjab Minor Canals Act, 1905.⁶
 Northern India Canal and Drainage Act, 1878.⁷
 Burma Canal Act, 1905.⁸
 Upper Burma Land and Revenue Regulation, 1889.⁹
 Burma Towns Act, 1907.¹⁰
 Burma Village Act, 1907.¹¹
 Chota Nagpur Tenancy Act, 1908.¹²
 Bombay Irrigation (Amendment) Act, 1914.¹³
 Co-operative Societies Act, 1912.¹⁴
 Charitable Endowments Act, 1890.¹⁵
 Punjab Excise Act, 1914.¹⁶
 Indian Press Act, 1910.¹⁷
 Punjab Registration of Medical Practitioners Act, 1916.¹⁸
 Assam Medical Act, 1916.¹⁹

By the Punjab Court of Wards Act, 1908,²⁰ a Court of Law cannot Courts of call in question an order made by the Local Government directing the Wards. Court of Wards to assume superintendence of properties of land-owners.²¹

There is a similar provision in the Bombay Court of Wards Act.²²

No Civil Court can try any suit against the Secretary of State for Bengal Excise India in Council in respect of anything done or alleged to have been Act. done in pursuance of the Bengal Excise Act, 1909.²³ There is a similar provision in the Punjab Land Preservation (Chos) Act, 1900.²⁴

By the Central Provinces Land Alienation Act, 1916, a Civil Court Central shall not have jurisdiction in any matter which the Chief Commissioner Provinces Land or a Revenue Officer is empowered by that Act to dispose of.²⁵ No Civil Alienation. Court can take cognizance of the manner in which the Chief Commissioner or any Revenue Officer exercises any power vested in him under that Act.²⁶

When it appears to the Deputy Commissioner that any Civil Court

¹ U. P. Act II of 1916.

² Bom. Act I of 1880, *post*, p. 638.

³ Bom. Act VI of 1888, s. 8 (1).

⁴ Reg. VIII of 1887, *post*, p. 436.

⁵ Act XXXII of 1855.

⁶ Punj. Act III of 1905, *post*, p. 438.

⁷ Act VIII of 1878, *post*, p. 437.

⁸ Bur. Act II of 1905, *post*, p. 437.

⁹ Reg. III of 1889, *post*, pp. 640, 641.

¹⁰ Bur. Act III of 1907, s. 12.

¹¹ Bur. Act VI of 1907.

¹² Ben. Act VI of 1908, *post*, p. 575.

¹³ Bom. Act II of 1914, s. 2, adding s. 88 to Bom. Act VII of 1879. *Vishnu Vinayak v. Secretary of State* (1921),

46 Bom. 738.

¹⁴ Act II of 1912, *post*, pp. 421, 422.

¹⁵ Act VI of 1890, s. 14.

¹⁶ Punj. Act I of 1914, s. 57.

¹⁷ Act I of 1910, s. 22.

¹⁸ Punj. Act II of 1916, s. 19.

¹⁹ Assam Act I of 1916, s. 27.

²⁰ Punj. Act II of 1908.

²¹ S. 5 (3).

²² Bom. Act I of 1905, s. 45.

²³ Ben. Act V of 1909, s. 92.

²⁴ Punj. Act II of 1900, s. 21.

²⁵ C. P. Act II of 1916, s. 24 (1).

²⁶ *Ibid.* s. 24 (2).

has passed a decree or order contrary to any of the provisions of that Act, he may, within two months of the date upon which he is informed of such decree or order, apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order, or in any other case to the Court of the Judicial Commissioner, and if the Court finds that such decree or order is contrary to any of the provisions of that Act, it shall alter it so as to make it consistent with that Act.¹

When any such appellate Court passes an order rejecting such application, the Deputy Commissioner may, within two months after he is informed of such order, apply to the Court of the Judicial Commissioner for revision thereof.²

Jurisdiction
not barred by
judgment of
Criminal Court.

Although a Civil Court has no power to interfere with an order passed by a magistrate in accordance with powers given to him by law,³ there is no reason why a Civil Court should not determine questions as to rights which were otherwise within its jurisdiction, whether the magistrate exceeded his jurisdiction⁴ or whether he determined the question of those rights for the purposes of making an order within his jurisdiction.⁵

In municipal and other Acts containing a special procedure for the determination of certain questions, it is submitted that a provision that a decision should be final excludes a suit, but in *Valli Ammal v. Corporation of Madras* (1912), 88 Mad., 41, it was held that the word "final" excluded further action under the Act in question, but did not exclude a suit.

Particular
remedy.

Where an enactment prescribes a particular remedy for the enforcement of a right, that remedy alone must be adopted, and a suit excluded.⁶ Thus a suit does not lie for the custody of a child.⁷

In many cases besides those above referred to the Legislature has restricted rights of suit, which would otherwise exist.

As to suits by and against princes and chiefs, see *post*, pp. 828, 829.

Liability of
Secretary of
State.

Neither the Secretary of State nor any member of his Council is personally liable in respect of any assurance or contract made by or on

¹ C. P. Act II of 1916, s. 25 (2).

² *Ibid.* s. 25 (8).

³ *Ujalamayi Dasi v. Chandra Kumar Neogi* (1869), 4 B. L. R. F. B., 24; 12 W. R. F. B., 18. See *Bakas Ram Sahoo v. Chummun Ram* (1867), 7 W. R. C. R., 11; *Chuni Lall v. Ram Kishen Sahu* (1888), 15 Cal., 460, at p. 466; *Mutty Ram Sahoo v. Mohi Lall Roy* (1880), 6 Cal., 291. See *Collector of Hooghly v. Iswar Chandra Mitter* (1871), 7 B. L. R., 449.

⁴ *Sham Doss v. Bhola Doss* (1864), 1 W. R. C. R., 824; *Anund Chunder Chatterjee v. Rokho Tarun Chatterjee* (1865), 2 W. R. C. R., 287; *Aseesoollah*

Gasee v. Bunk Beharee Roy (1867), 7 W. R. C. R., 47; *Eshan Chunder Banerjee v. Nund Coomar Banerjee* (1867), 8 W. R. C. R., 239.

⁵ *Secretary of State v. Jethabhai Kaidas* (1892), 17 Bom., 293; *Chuni Lall v. Ram Kishen Sahu* (1888), 15 Cal., 460; *Mutty Ram Sahoo v. Mohi Lall Roy* (1880), 6 Cal., 291.

⁶ *Chunilal Virchand v. Ahmedabad Municipality* (1911), 36 Bom., 47.

⁷ *Sathi v. Ramandhi Pandaram* (1919), 42 Mad., 647. See *Besant v. Narayaniah* (1914), 41 I. A., 814; 38 Mad., 807; 18 C. W. N., 1089; 10 Bom. L. R., 625.

behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant, or engagement of the East India Company; nor is any person executing any assurance or contract on behalf of the Secretary of State in Council personally liable in respect thereof.¹

A Judge, Magistrate,² Justice of the Peace, or other person acting judicially³ is protected from suit⁴ in respect of acts done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:⁵ Provided that he at the time in good faith⁶ believed himself to have jurisdiction.⁷

It has been held that the question of good faith does not arise if the Judicial officer had jurisdiction;⁸ but it has also been held that he is not protected if he has failed to act reasonably, carefully, and circumspectly in discharge of his duties.⁹ There must be an "honest persuasion founded, after fair inquiry and consideration, upon what might mistakenly, either in law or in fact, be considered a reasonable or probable ground by a person possessing ordinary qualifications for the office held by the magistrate sought to be made liable."¹⁰

To secure protection under the Act the defendant must show:

- (1) that the act complained of was done or ordered by him in the discharge of his judicial duty; and
- (2) that it was within the limits of his jurisdiction, or if not within

¹ 5, 6 Geo. V. c. 61, s. 32 (3).

² This includes any one vested with the powers of a magistrate: Act X of 1897, s. 3 (31); *Halimoozumah (Shahzada) v. Municipal Commissioners of Hooghly* (1870), 13 W. R. C. R., 840.

³ *Sinclair v. Broughton* (1882), 9 I. A., 152; 9 Calc., 341; 13 C. L. R., 185; *Chunder Narain Singh v. Brijobulbul Gooyee* (1874), 14 B. L. R., 254; 21 W. R. C. R., 391; *Collector of Hooghly v. Tarak Nath Mukhopadhyaya* (1871), 7 B. L. R., 449; 16 W. R. C. R., 63; *Seshaiyangar v. Raghunatha Row* (1870), 5 Mad. H. C., 345; *Parankusam v. Stuart* (1865), 2 Mad. H. C., 396. He is not protected by this provision when he is acting ministerially: *Chunder Narain Singh v. Brijobulbul Gooyee* (1874), 14 B. L. R., 254; 21 W. R. C. R., 391; *Collector of Hooghly v. Iswar Chandra Mitter* (1871), 7 B. L. R., 449.

⁴ Act XVIII of 1850, s. 1.

⁵ See *Parankusam v. Stuart* (1865), 2 Mad. H. C., 396; *Clarke v. Brojendra Kishore Roy Chowdhury* (1912), 39 I. A., 163, at p. 177; 39 Calc., 953, at

p. 967; 16 C. W. N., 865, at p. 874; 14 Bom. L. R., 717, at p. 772; *Vithal Ramchandra v. Raghavendra Ram Rao* (1920), 45 Bom., 1089; 23 Bom. L. R., 447.

⁶ A thing is deemed to be done "in good faith" where it is in fact done honestly, whether it is done negligently or not: Act X of 1897, s. 3 (20). Cf. *Calder v. Halket* (1889), 2 M. I. A., 298.

⁷ As to the meaning of "Jurisdiction," see *ante*, p. 1.

⁸ *Meghraj v. Zakir Hussain* (1876), 1 All. 280; *Teyen v. Ram Lai* (1890), 12 All., 115; *Girjashanker v. Gopalji* (1905), 30 Bom., 241; 7 Bom. L. R., 951.

⁹ *Vinayak Divakar v. Itcha (Bai)* (1865), 3 Bom. H. O. A. C., 36; *Vythoba Malthari v. Corfield* (1865), *ibid.*, App. 1; *Collector of Sea Customs v. Punniar Chithambaram* (1876), 1 Mad., 89. See Act X of 1897, s. 3 (20), above, note 6.

¹⁰ *Ragunada Rao v. Nathamuni Thathamayyengar* (1871), 6 Mad. H. C., 423, at p. 439.

those limits, that he, at the time, in good faith, believed himself to have jurisdiction to do or order the acts complained of.¹

Similar protection is given to an officer of Court or any other person who is bound to execute the lawful warrants or orders of any such judicial officer or person acting judicially.²

As to the protection given to Village Courts and Village Benches in the Central Provinces, see Central Provinces Village Panchayat Act, 1920, s. 66.³

Police Officers. Under certain enactments, *e.g.* the Madras District Police Act, 1859,⁴ the Rangoon Police Act, 1899,⁵ and the North-West Border Military Police Act, 1904,⁶ the production of a warrant which justified the alleged tortious act is a sufficient protection to a police officer.

Forest Officers. Suits do not lie against public servants acting in good faith under the Indian Forests Act, 1878,⁷ or the Hazara Forests Regulation, 1911,⁸ or for anything done or omitted by them in good faith under the Assam Forest Regulation, 1891,⁹ the Burma Forests Act, 1902,¹⁰ the British Baluchistan Forests Regulation, 1890,¹¹ or the Madras Forest Act, 1882,¹² or the Punjab Land Preservation Act, 1900.¹³

Madras Estates Act. No suit or other proceeding lies against the Secretary of State or any officer of Government in respect of anything done by a Collector or other officer regarding a deposit of rent under the Madras Estates Act, 1908,¹⁴ the Punjab Tenancy Act, 1887,¹⁵ or the Agra Tenancy Act, 1901.¹⁶

Commissioners under the Rangoon¹⁷ and Chittagong Port Trust¹⁸ are not liable in respect of acts done by harbour-masters and other subordinates.

Immunity in respect of acts done in good faith under colour of Act. In many enactments the legislature has protected by immunity from suit, prosecution, or other proceeding acts done in good faith under the colour of the particular enactment.

For instances see:

Ajmere Taluqdars' Relief Regulation, 1872.¹⁹

Ahmedabad Taluqdars Act, 1862.²⁰

Oudh Taluqdars' Relief Act, 1870.²¹

Bundelkhand Incumbered Estates Act, 1903.²²

Broach and Kaira Incumbered Estates Act, 1881.²³

Chota Nagpur Incumbered Estates Act, 1876.²⁴

Sindh Incumbered Estates Act, 1896.²⁵

¹ *Girjashankar v. Gopalji* (1905), 30 Bom., 241; 7 Bom. L. R., 951.

² Act XVIII of 1850, s. 1.

³ C. P. Act V of 1920.

⁴ Act XXIV of 1859, s. 54.

⁵ Bur. Act IV of 1899, s. 54.

⁶ Act IV of 1904, s. 15.

⁷ Act VII of 1878, s. 73.

⁸ Reg. III of 1911, s. 56.

⁹ Reg. VII of 1891, s. 70.

¹⁰ Bur. Act IV of 1902, s. 79.

¹¹ Reg. V of 1890, s. 87.

¹² Mad. Act V of 1882, s. 61.

¹³ Punj. Act II of 1900, s. 21.

¹⁴ Mad. Act I of 1908, s. 72.

¹⁵ Act XVI of 1887, s. 32 (3).

¹⁶ U. P. Act II of 1901, s. 118.

¹⁷ Bur. Act IV of 1905, s. 101.

¹⁸ Ben. Act V of 1914, ss. 107, 110.

See also Bombay Port Trust Act, 1879 (Bom. Act VI of 1879, s. 87).

¹⁹ Reg. IV of 1872, s. 84.

²⁰ Bom. Act VI of 1862, s. 19.

²¹ Act XXIV of 1870, s. 28.

²² U. P. Act I of 1908, s. 85, extended by U. P. Act V of 1915.

²³ Act XXI of 1881, s. 36.

²⁴ Act VI of 1976, s. 22.

²⁵ Act XX of 1896, s. 38.

Bombay Revenue Jurisdiction Act, 1876.¹
 Bengal Excise Act, 1909.²
 United Provinces Excise Act, 1910.³
 Burma Excise Act, 1917.⁴
 Bihar and Orissa Excise Act, 1915.⁵
 Eastern Bengal and Assam Excise Act, 1910.⁶
 Indian Income Tax Act, 1922.⁷
 Sea Customs Act, 1878.⁸
 United Provinces Village Panchayat Act, 1920.⁹
 Bombay Abkari Act, 1878.¹⁰
 Madras Abkari Act, 1886.¹¹
 Madras Salt Act, 1889.¹²
 Bombay Salt Act, 1890.¹³
 Burma Salt Act, 1917.¹⁴
 Bombay Court of Wards Act, 1905.¹⁵
 United Provinces Court of Wards Act, 1912.¹⁶
 Punjab Court of Wards Act, 1908.¹⁷
 Bengal Alluvion and Diluvion Act, 1847.¹⁸
 Bengal Alluvial Lands Act, 1920.¹⁹
 Indian Treasure Trove Act, 1878.²⁰
 The Provident Funds Act, 1897.²¹
 Bengal Medical Act, 1914.²²
 Madras Medical Registration Act, 1914.²³
 Bihar and Orissa Medical Act, 1916.²⁴
 United Provinces Medical Act, 1917.²⁵
 Assam Medical Act, 1917.²⁶
 Indian Press Act, 1910.²⁷
 Indian Electricity Act, 1910.²⁸
 Cantonments Act, 1910.²⁹
 Calcutta Hackney Carriage Act, 1919.³⁰

¹ Act X of 1876, s. 6.

² Ben. Act V of 1909, s. 91. This and the other Excise Acts protect in respect of acts done under any other law for the time being in force relating to the excise revenue.

³ U. P. Act IV of 1910, s. 78.

⁴ Bur. Act V of 1917, s. 68.

⁵ B. and O. Act II of 1915, s. 95.

⁶ E. B. and A. Act I of 1910, s. 76.

⁷ Act XI of 1922, s. 67.

⁸ Act VIII of 1878, s. 197.

⁹ U. P. Act VI of 1920, s. 73.

¹⁰ Bom. Act V of 1878, s. 17. This does not affect the jurisdiction of the High Court of Bombay or of the Court of Small Causes at Bombay: *ibid.*

¹¹ Mad. Act I of 1886, s. 72.

¹² Mad. Act IV of 1889, s. 87.

¹³ Bom. Act II of 1890, s. 61.

¹⁴ Bur. Act II of 1917, s. 85.

¹⁵ Bom. Act I of 1905, s. 45.

¹⁶ U. P. Act IV of 1912, s. 53. As to a member of an advisory committee, see *ibid.* s. 63 (5).

¹⁷ Punj. Act II of 1908, s. 52 (2).

¹⁸ Act IX of 1847, s. 9.

¹⁹ Ben. Act V of 1920, s. 9.

²⁰ Act VI of 1878, s. 17.

²¹ Act IX of 1897, s. 5.

²² Ben. Act VI of 1914, s. 27.

²³ Mad. Act IV of 1914, s. 19.

²⁴ B. and O. Act II of 1916, s. 2.

²⁵ U. P. Act III of 1917, s. 28.

²⁶ Assam Act I of 1916, s. 27.

²⁷ Act I of 1910, s. 22.

²⁸ Act IX of 1910, s. 56.

²⁹ Act XV of 1910, s. 28.

³⁰ Ben. Act I of 1919, s. 88.

Bengal Village Self-Government Act, 1919.¹
 Upper Burma Oil Regulation, 1910.²
 Calcutta Improvement Act, 1911.³
 Madras Survey and Boundaries Act, 1897.⁴
 Madras City Municipal Act, 1904.⁵
 Madras District Municipalities Act, 1884 and 1916.⁶
 Bombay Village Sanitation Act, 1899.⁷
 Destructive Insects and Pests Act, 1914.⁸
 Dourine Act, 1910.⁹
 Indian Factories Act, 1911.¹⁰
 Indian Airships Act, 1911.¹¹
 Burma Municipal Act, 1898.¹²
 Lower Burma Town and Village Act, 1898.¹³
 Rangoon Port Act, 1905.¹⁴
 Sind-Sagar Doab Colonisation Act, 1902.¹⁵
 Punjab Minor Canals Act, 1905.¹⁶
 Simla House Act, 1918.¹⁷
 Madras Forest Act, 1882.¹⁸
 Burma Forest Act, 1902.¹⁹
 Assam Forest Regulation, 1891.²⁰
 British Baluchistan Forest Regulation, 1890.²¹
 Punjab Land Preservation (Chos) Act, 1900.²²
 Bihar and Orissa Village Administration Act, 1922.²³
 Bihar and Orissa Private Irrigation Works Act, 1922.²⁴
 Bihar and Orissa Minor Irrigation Works Act, 1922.²⁵
 City of Bombay Police Act, 1902.²⁶
 Bombay District Police Act, 1890.²⁷
 Bombay Town Planning Act, 1915.²⁸
 Frontier Crimes Regulation, 1901.²⁹
 Burma Rural Self-Government Act, 1921.³⁰
 Sikh Gurdwaras and Shrines Act, 1922.³¹

Sanction
for suit.

In some cases the exercise of jurisdiction by a Civil Court is dependent upon the sanction of some other authority. Where a legislative

- ¹ Ben. Act V of 1919, s. 63.
- ² Reg. VI of 1910, s. 12.
- ³ Ben. Act V of 1911, s. 155.
- ⁴ Mad. Act IV of 1897, s. 88.
- ⁵ Mad. Act IV of 1904, s. 459.
- ⁶ Mad. Act IV of 1884, s. 261 (4);
Mad. Act IV of 1916, s. 2, inserting
s. 189D (2); in Mad. Act IV of 1884.
See *post*, p. 470.
- ⁷ Bom. Act I of 1889, s. 46.
- ⁸ Act II of 1914, s. 6.
- ⁹ Act V of 1910, s. 16.
- ¹⁰ Act XII of 1911, s. 58.
- ¹¹ Act XVII of 1911, s. 14.
- ¹² Bur. Act III of 1898, s. 42A, as
inserted by Bur. Act II of 1911, s. 4.
- ¹³ Bur. Act IV of 1898, s. 45.
- ¹⁴ Bur. Act IV of 1905, s. 101.
- ¹⁵ Punj. Act I of 1902, s. 15.
- ¹⁶ Punj. Act III of 1905, s. 67 (2).
- ¹⁷ Punj. Act I of 1918, s. 14.
- ¹⁸ Mad. Act V of 1882, s. 61.
- ¹⁹ Bur. Act IV of 1902, s. 79.
- ²⁰ Reg. VII of 1891, s. 77.
- ²¹ Reg. V. of 1890, s. 37.
- ²² Punj. Act II of 1900, s. 21.
- ²³ B. & O. Act III of 1922, s. 92.
- ²⁴ B. & O. Act V of 1922, s. 49.
- ²⁵ B. & O. Act VI of 1922, s. 45.
- ²⁶ Bom. Act IV of 1902, s. 140.
- ²⁷ Bom. Act IV of 1890, s. 80.
- ²⁸ Bom. Act I of 1915, s. 49.
- ²⁹ Reg. III of 1901, s. 63.
- ³⁰ Bur. Act IV of 1921, s. 70.
- ³¹ Punj. Act VI of 1922, s. 22.

enactment requires the sanction of any authority for the institution of a suit, a Court has no jurisdiction to try such suit in the absence of such sanction,¹ but where such sanction is not required by any such enactment, but as a rule of practice, as for instance sanction for a suit by or against a Receiver, such sanction can be obtained during the course of the litigation, and there is no question of jurisdiction.²

By sections 4 and 6 of the Pensions Act, 1871,³ except on receiving a certificate from the Collector, Deputy-Commissioner, or other officer authorised in that behalf that it be tried by a Civil Court otherwise competent to try the same, no Civil Court⁴ can entertain any suit relating to any pension⁵ or grant of money or land revenue⁶ conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment claim or right for which such pension or grant may have been substituted.⁷

It has been held in Madras⁸ that the above restriction has no application to religious and charitable endowments, but an opposite view has been maintained in Bombay.⁹

No certificate is necessary in case of the following suits :

(a) a suit claiming the land itself ;¹⁰

¹ See *Dinesh Chunder Roy v. Golam Mostapha* (1888), 16 Calc., 89.

² *Ammukutty v. Manavikraman* (1920), 43 Mad., 793; *Jagat Tarini Dasi v. Naba Gopal Chaki* (1907), 84 Calc., 305; *Banku Behari Dey v. Harendra Nath Mukerjee* (1910), 15 C. W. N., 54; *Maharajah of Burdwan v. Apurba Krishna Roy* (1911), *ibid.* 872. Contra *Pramatha Nath Gangooly v. Khetra Nath Banerjee* (1904), 32 Calc., 270.

³ Act XXIII of 1871.

⁴ This includes a Forest Settlement officer: *Secretary of State v. Vydia Pillai* (1898), 17 Mad., 198.

⁵ This does not apply to a zamindari the revenue of which is remitted by the Government: *Mannu Lal v. Fasal Imam* (1911), 33 All., 580.

⁶ This applies only where there is a distinct grant of land revenue: *Secretary of State v. Subbarayudu* (1912), 36 Mad., 559. See *Mannu Lal v. Fasal Imam* (1911), 33 All., 580; *Ganpat Rao v. Anand Rao* (1905), 28 All., 104. It applies to a suit for a share of land revenue assigned for the purpose of supporting the office of *kulkarni* (a functionary under the village accountant): *Balkrishna v. Dattatraya* (1917), 42 Bom., 257; 20 Bom. L. R., 325.

⁷ Act XXIII of 1871, s. 4. *Dwarkanath Amrit v. Mahadeo Balkrishna* (1912), 37 Bom., 91; 14 Bom. L. R., 988; *Balkrishna v. Dattatraya* (1917), 42 Bom., 257; 20 Bom. L. R., 325; *Madhavrao v. Secretary of State* (1920), 22 Bom. L. R., 1176; *Shivram Dinkar Gharapuray v. Secretary of State* (1886), 11 Bom., 222.

⁸ *Venkateswari Aiyar v. Secretary of State* (1907), 31 Mad., 12; *Secretary of State v. Abdul Hakkim Khan* (1880), 2 Mad., 294; *Kolandai Mudali v. Sankara Bharadhi* (1882), 5 Mad., 302; *Subramanya Ayyar v. Secretary of State* (1883), 6 Mad., 361; *Athavulla v. Gouse* (1888), 11 Mad., 283.

⁹ *Miya v. Bava Saheb Santi Miya (Sayad)* (1896), 22 Bom., 496; *Vyankaji v. Sarjarao Apajtrao* (1891), 16 Bom., 587. See *Maharaval Mohansingji Jeysingji v. Government of Bombay* (1881), 8 L. A., 77; 5 Bom., 408.

¹⁰ *Ganpat Rao v. Anand Rao* (1909), 37 L. A., 39; 32 All., 148; 14 C. W. N., 310; *Saydanmia v. Hasanmiya* (1920), 22 Bom. L. R., 959, following *Vasudev Pandit v. Collector of Puna* (1878), 10 Bom. H. C. (A. C.), 471; *Balwant Ramchandra v. Secretary of State* (1905), 29 Bom., 480; 7 Bom. L. R., 497; *Ravji Narayan Mandlik v.*

- (b) a suit for a declaration of the plaintiff's eligibility to officiate as patel of a village; ¹ or
- (c) a suit by assignees of land revenue for arrears ² or a suit by an inamdar of a village against a khot to recover rent in kind; ³
- (d) a proceeding in execution for payment of money which the Collector had been ordered to pay. ⁴

The Act applies where the claim is to recover money retained by Government, ⁵ even where the dispute is between private individuals as to money payable by Government. ⁶

It includes a suit for a declaration that the plaintiffs are owners of a share in a Deshpande Kulkarni Vatar which consists of a cash allowance paid annually from the Government Treasury. ⁷

Even if a certificate be given, a Civil Court cannot make an order or decree by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly. ⁸

Nothing in sections 4 and 6 applies ⁹ to—

- (1) Any inam of the class referred to in the first section of Madras Act IV of 1862, viz. hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority of the Governor of Madras in Council (or which having been made by any Native Government have been confirmed or continued by the British Government: Act XXXI of 1856) in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamindaris or paleiyams forfeited or held under attachment or management by the officers of Government, or as a yaumia or charitable allowance or as a pension, which has been or shall be enfranchised by the Imam Commissioner, and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity.
- (2) Pensions theretofore granted by Government in the territories respectively subject to the Lieutenant-Governor (now Governor)

Dadaji Bapuji Desai (1875), 1 Bom., 528; *Babaji Hari v. Rajaram Ballal* (1875), 1 Bom., 75; *Panchanada v. Nilakanda* (1888), 7 Mad., 191; *Tirumalai Naik (Kumara) v. Bangaru Tirumalai Sauri Naik* (1898), 21 Mad., 810, at p. 820. See *Hasara Begum (Shahsadee) v. Collector of Burdwan* (1874), 28 W. R. O. R., 378.

¹ *Gurushidgavda v. Rudragavdati* (1877), 1 Bom., 531.

² *Nagar Mal v. Ali Ahmad* (1888), 10 All., 896.

³ *Gangadhar Hari Karkare v. Morbhat Purohit* (1893), 18 Bom., 525.

⁴ *Chhagan Lal v. Pranjivan* (1903), 34 Bom., 154; 11 Bom. L. R., 1869.

⁵ *Vasudev Sadashiv Modak v. Collector of Ratnagiri* (1877), 4 I. A., 119; 2 Bom., 99; *Maharaval Mohansingji*

Jeysingji v. Government of Bombay (1881), 8 I. A., 77; 5 Bom. 408.

⁶ *Mahomed Isaak Mushyak (Syed) v. Azeesoon Nissa Begum* (1882), 4 Mad., 341; *Vyankaji v. Sarjarao Apajirao* (1891), 16 Bom., 587; *Andi Achen v. Kombi Achen* (1894), 18 Mad., 187; *Deo Kuar v. Mankuar* (1894), 21 I. A., 148; 17 All., 1; *Miya Vali Ullu v. Bava Santi Miya (Sayed)* (1896), 22 Bom., 496.

⁷ *Dwarkanath Amrit v. Mahadeo Balkrishna* (1912), 37 Bom., 91; 14 Bom. L. R., 938.

⁸ Act XXIII of 1871, s. 6. *Secretary of State v. Jawahir Lal* (1915), 37 All., 388, upheld on appeal, *Shiam Sundar Lal (Hakim) v. Secretary of State*, P. C. 21/10/19.

⁹ Act XXIII of 1871, s. 7.

of Bengal, and the Lieutenant-Governor of the North-West Provinces (now Governor of Agra and Oudh) either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions are not liable to resumption on the death of the recipient, but every such pension is capable of alienation and descent, and may be sued for and recovered in the same manner as other property.¹

As to the resumption of a saranjam grant, see *Secretary of State v. Laxmibai* (1922), 50 I. A., 313.

The certificate can be obtained at any time before the final decree even during appeal proceedings.²

By section 55 of the Bengal Court of Wards Act, 1879,³ no suit shall be brought on behalf of any ward by a manager without the authority of the Court. There are similar provisions in Madras⁴ and Bombay.⁵

As to proceedings against soldiers of His Majesty's regular forces, see *Solanki*, 44, 45 Vict. c. 58, s. 144.

The Civil Procedure Code (Act V of 1908) has placed a bar against the trial of suits in the following cases :—

“Section 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor-General in Council and having like jurisdiction, or before His Majesty in Council. Pending suits.

“*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

“Section 11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Res judicata.

“*Explanation I.*—The expression ‘former suit’ shall

¹ Act XXIII of 1871, s. 7.

² Ben. Act IX of 1879.

³ *Ganpat Rao v. Anand Rao* (1909),

⁴ Mad. Act I of 1911, s. 3, amending Mad. Act I of 1902, s. 52.

37 I. A., 39; 32 All., 148; 14 C. W. N., 310.

⁵ Bom. Act I of 1905, s. 35.

denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

"*Explanation II.*—For the purposes of this section the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

"*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

"*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

"*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purpose of this section, be deemed to have been refused.

"*Explanation VI.*—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further
suit.

"Section 12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

Foreign
judgment.

"Section 13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ;¹
- (c) where it appears on the face of the proceeding to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases to which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ;

¹ See *Sivaraman Chetti v. Iburaam Shau Khan v. Gafar Khan* (1891), *Sahab* (1895), 18 Mad., 327; *Fasal* 15 Mad., 82.

- (e) where it has been obtained by fraud ;
 (f) where it sustains a claim founded on a breach of any law in force in British India."

The decisions under these provisions are to be found in Caspersz's "Modern and Equitable Estoppel and Res Judicata," 8rd edn.; Woodroffe's "Civil Procedure Code"; Mulla's "Code of Civil Procedure," 7th edn.

"Section 14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction."

Presumption as to foreign judgments.

"Section 15. Every suit shall be instituted in the Court of the lowest grade competent to try it."

Court in which suits to be instituted.

"Court of the lowest grade" refers only to Courts to which the Civil Procedure Code is applicable.¹ It applies to cases under the Bengal Tenancy Act, 1885.²

This rule is not one of jurisdiction but of procedure.³ Where a suit is instituted in a Court of lower grade than applicable, the question is one of jurisdiction.⁴

This section does not prevent a District Judge trying a suit, which was triable by a Subordinate Judge,⁵ or a Subordinate Judge trying a suit within the jurisdiction of a Munsif's Court.⁶ It is for the protection of a Court which may decline to try a case which should have been instituted in a lower Court.⁷

"Section 16. Subject to the pecuniary or other limitations prescribed by any law, suits—"

Suits to be instituted where subject-matter is situate.

- (a) for the recovery of immovable property with or without rent or profits,
 (b) for the partition of immovable property,
 (c) for foreclosure or redemption in the case of a mortgage of a charge upon immovable property,
 (d) for the determination of any other right to or interest in immovable property,⁸

¹ *Mirkhan v. Kadarsa* (1889), 13 Mad., 145.

² *Fashur Rahim Abu Ahmed v. Dwarka Nath Chowdhry* (1903), 80 Cal., 458; *Nidhi Lal v. Mashar Husain* (1884), 7 All., 230. Cf. *Gourachandra Patnaikudu v. Vikrama Deo* (1899), 23 Mad., 367.

³ *Matra Mondal v. Hari Mohun Mullick* (1889), 17 Cal., 155.

⁴ *Ibid.* at p. 160.

⁵ *Augustine v. Medlycott* (1892), 15 Mad., 241.

⁶ *Matra Mondal v. Hari Mohun Mullick* (1889), 17 Cal., 155; *Nidhi Lal v. Mashar Husain* (1884), 7 All., 230.

⁷ *Nidhi Lal v. Mashar Husain* (1884), 7 All., 230.

⁸ This includes a claim to charge

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under
distrain or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

“Provided that a suit to obtain relief respecting, or compensation for wrong¹ to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

“*Explanation.*—In this section ‘property’ means property situate in British India.”²

This section has no application to a High Court in the exercise of its ordinary original Civil jurisdiction.³

Suits for immovable property situate within jurisdictions of different Courts.

“Section 17. Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts,⁴ the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”⁵

This section does not apply to a High Court in the exercise of its original civil jurisdiction.⁶

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

“Section 18.—(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of

immovable property with maintenance: *Sitabai v. Laxmibai* (1915), 40 Bom., 337; 18 Bom. L. R., 67. It does not include a suit for dissolution of partnership: *Durga Das v. Jai Narain* (1917), 41 All., 513.

¹ I.e. an actionable wrong: *Templeton v. Laurie* (1900), 2 Bom. L. R., 244.

² A suit for mesne profits of land situate outside British India comes within this proviso: *Mahadeo v.*

Ramchandra (1921), 46 Bom., 108; 23 Bom. L. R., 903.

³ Act V of 1908, s. 120. See *ante*, pp. 38, 39.

⁴ I.e. Courts to which the Code applies: *Setrucherla Ramabhadraraju (Raja) v. Maharajah of Jeypore* (1919), 46 I. A., 151; 42 Mad., 818; 23 C. W. N., 1033; 21 Bom. L. R., 914.

⁵ Act V of 1908, s. 120. See *ante*, pp. 38, 39.

⁶ *Ibid.*

those Courts may, if satisfied there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

“Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

“(2) Where a statement has not been recorded under subsection (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.¹

“Section 19.—Where a suit is for compensation for wrong done to the person or movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.”

Suits for compensation for wrongs to person or movables.

Illustrations.

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

“Section 20.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

Other suits to be instituted where defendants reside or cause of action arises.

“(a) the defendant, or each of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain ;² or

¹ *Sibu Halder v. Gupi Sundari Dassya* (1897), 2 O. W. N., 169. entirely outside the limits of the jurisdiction: *Ismailji v. Ismail* (1921), 45 Bom., 1228 ; 28 Bom. L. R., 548.

² Even if the cause of action arose

"(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain: provided that, in such cases, either the leave of the Court is given,¹ or the defendants who do not reside, or carry on business, or personally work for gain, acquiesce in such institution; or

"(c) the cause of action,² wholly or in part,³ arises.

"*Explanation I.*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

For instance where the defendant was captain of a ship which was unloading within the limits of the jurisdiction of the Court in which he was sued.⁴

"*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.⁵

Illustrations.

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. He may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B, and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B

¹ *Mahomedbhai v. Adamji* (1921), 46 Bom., 229.

² As to the meaning of "cause of action," see *ante*, pp. 44, 45. As to a suit to set aside a fraudulent decree, see *Dan Dayal v. Munna Lal* (1914), 36 All., 564.

³ As to the place where the contract was made, see *Sitaram Marwari v. Thompson* (1905), 32 Cal., 884. As to the place where it was to be carried out, see *Bhattacharya v. Cawnpur Woollen Mills* (1911), 16 O. W. N., 325. Cf. *ante*, p. 44. As to a suit

to set aside a fraudulent decree obtained in a Court in another Province, see *Khushali Ram v. Gokul Chand* (1917), 39 All., 607; *Jawahir v. Neki Ram* (1914), 37 All., 189. As to infringement of trade mark, see *Kheshta Pal Sharma v. Pancham Singh Varma* (1915), 37 All., 446.

⁴ *Olin v. Laveszo* (1884), 10 Cal., 878.

⁵ *Bank of Bengal v. Sarat Chandra Mitra* (1918), 4 Pat. L. J., 141; [1919, Pat.], 155.

resides, or at Delhi where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

If the defendant resides or the fraud took place within its jurisdiction, Fraud. a Court can declare that a decree, whether of an inferior, co-ordinate, or superior Court, was obtained by fraud.¹

Except in a Court where the defendant resides or carries on business,² Foreign judgment. or a part of the cause of action arose within the territorial limits of its jurisdiction, a suit cannot be brought on a judgment of a foreign Court.³

This section does not apply to a High Court in the exercise of its original jurisdiction.⁴

Leave to sue under this section may be given before or after the institution of the suit.⁵

“Section 21.—No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases, where the issues were settled, at or before such settlement, and unless there has been a consequent failure of justice.” Objections to jurisdiction.

This section applies to objections regarding want of territorial jurisdiction.⁶ It does not apply to objections going to the nullity of the order on the ground of want of jurisdiction.⁷

“Section 22.—Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred Power to transfer suits which may be instituted in more than one Court.

¹ *Dan Dayal v. Munna Lal* (1914), 36 All., 564; *Arunachellam v. Sabapathy* (1917), 41 Mad., 218; *Nistarini Dassi v. Nundo Lal Bose* (1899), 26 Cal., 891, upheld on appeal: 30 Cal., 369; 7 C. W. N., 353, and in the Privy Council: *Benode Behari Bose v. Nistarini Dassi* (1905), 32 I. A., 193; 33 Cal., 180; 9 C. W. N., 961; 7 Bom. L. R., 887; *Banke Behari Lal v. Pokhe Ram* (1902), 25 All., 48; *Jawahir v. Neki Ram* (1914), 37 All., 189; *Nanda Kumar Howladar v. Ram Jiban Howladar* (1914) 41 Cal., 990; 18 C. W. N., 681; *Pran Nath Roy v. Mohesh Chandra Moitra* (1897), 24 Cal., 546 (upheld on appeal: *Radha Raman Shaha v. Pran Nath Roy* (1901), 28 Cal., 475; 5 C. W. N.,

757; *Abdul Huq Chowdhry v. Abdul Hafiz* (1910), 14 C. W. N., 696, see ante, p. 318, note 2.

² *Ante*, p. 318.

³ *Kassim Mamoojee v. Isuf Mahomed Sulliman* (1902), 29 Cal., 509; 6 C. W. N., 829.

⁴ Act V of 1908, s. 120. See ante, pp. 38, 39.

⁵ *Narayan Shankar v. Secretary of State* (1906), 30 Bom., 570; 8 Bom. L. R., 543.

⁶ *Zamindar of Ettiyapuram v. Chidambaram Chetty* (1920), 43 Mad., 675.

⁷ *Setrucherla Ramabhadraraju (Iraja) v. Maharaja of Jeypore* (1919), 46 I. A., 151, at p. 156; 42 Mad., 813, at p. 820; 23 C. W. N., 1038, at p. 1038; 21 Bom. L. R., 914, at p. 919.

to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed."

To what Court application lies.

"Section 23.—(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

"(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

"(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

General power of transfer and withdrawal.

"Section 24.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court¹ or the District Court² may at any stage³—

"(a) transfer any suit, appeal, or other proceeding pending before it for trial or disposal to any Court subordinate to it⁴ and competent⁵ to try or dispose of the same,⁶ or

"(b) withdraw any suit, appeal, or other proceeding pending in any Court subordinate⁴ to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it, and competent to try and dispose of the same; or

¹ This includes a Division Bench of a High Court: *Kadambini Baiji v. Madan Mohan Basac* (1898), 3 C. W. N., 247.

² This does not include an Assistant Judge in the Bombay Presidency: *Umar Abdul Rahiman (Haji) v. Gustadji Muncherji* (1910), 34 Bom., 411; 12 Bom. L. R., 354.

³ Even if the case be part-heard: *Mahadeo Prasad Sahu v. Gajadhar Persad Sahu* (1905), 10 C. W. N., 12; *Palanisami Cowndan v. Thondama Cowndan* (1902), 26 Mad., 595. See, however, *Kumarasami Reddiar v. Subbaraya Reddiar* (1899), 23 Mad., 314. A remand of the case by the

High Court will not prevent the District Judge acting under this section: *Rajkali v. Gopi Nath Naik* (1921), 44 All., 211.

⁴ In a divorce proceeding the Court of a Divisional Judge is not for the purposes of this section subordinate to the High Court: *Wallace v. Wallace* (1915), 40 Bom., 109; 17 Bom. L. R., 948.

⁵ *Janmat Hussain (Sheikh) v. Gulam Kutubuddin Ahmad (Sheikh)* (1920), 5 Pat. L. J., 588; [1920 Pat.], 274.

⁶ *Mahomed Musa v. Abul Hassan Khan* (1914), 41 Calc., 866; 18 C. W. N., 612.

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn."

This section does not authorise a transfer from a Court not having jurisdiction,¹ or to a Court not otherwise competent to try the suit.²

A District Judge cannot transfer a case which has been remanded to his Court by the High Court, but must try it himself.³

"(2) Where any suit or proceeding has been transferred under sub-section (1) the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

"(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

"(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes⁴ shall, for the purposes of such suit, be deemed to be a Court of Small Causes."⁵

Grounds of transfer are not limited or specified, but it is clear that the mere convenience of the defendants is not a ground.⁶

"Section 25.—(1) Where any party to a suit, appeal, or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him, and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor-General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal, or proceeding to any other High Court.

Power of Governor-General in Council to transfer suit.

¹ Cf. *Ledgard v. Bull* (1886), 18 I. A., 134, at p. 144; 9 All., 191, at p. 202, approving of *Peary Lal Mozoomdar v. Komal Kishore Dassia* (1880), 6 Cal., 30; *Sairah (Bibi) v. Golab Koer (Musst)* [1919 Pat.], 409.

² *Jannat Hussain (Sheikh) v. Gulam Kutubuddin Ahmad (Sheikh)* (1920), 5 Pat. L. J., 588; [1920 Pat.], 274.

³ *Sita Ram v. Nauri Dulaiya* (1899), 21 All., 230; *Fatima Bibi v. Abdul Majid* (1892), 14 All., 531.

⁴ It has been held that this expression does not include a Judge to

whom Small Cause Court powers have been given: *Ramchandra v. Ganesh* (1898), 23 Bom., 882; *Dulal Chandra Deb v. Ram Narain Deb* (1904), 31 Cal., 1057. See, however, *Mangal Sen v. Rupchand* (1891), 18 All., 324; *Sankararama v. Padmanabha* (1912), 38 Mad., 25; *Sukha v. Raghunath Das* (1916), 39 All., 214.

⁵ See *Sankararama v. Padmanabha* (1912), 38 Mad., 25; *Chatur Singh v. Rania (Musammat)* (1918), 40 All., 525.

⁶ *Madho Prasad v. Motichand* (1919), 41 All., 381.

“(2) The law applicable to any suit, appeal, or proceeding so transferred shall be the law which the Court in which the suit, appeal, or proceeding was originally instituted ought to have applied to such case.”

Costs.

By section 85 of the Code, the fact that the Court has no jurisdiction to try a suit is no bar to the exercise of its power to determine by whom the costs of the suit are to be borne.

As to compensatory costs in respect of false or vexatious claims or defences, see section 85A, inserted by Act IX of 1922, s. 2.

Execution of decree by any Court other than that which passed it.

The jurisdiction of a Court in executing its decree or order¹ is restricted by its territorial limitations. Where the judgment debtor's property lies outside the jurisdiction of the Court, the decree or order¹ must be transferred to the Court within the local limits of whose jurisdiction the property sought to be attached happens to be.²

Lands situate in more than one jurisdiction.

Where immovable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.³

This can apparently be done whether one of these Courts passed the decree, or the decree has been transferred to one of them for execution.

The following provisions of the Civil Procedure Code (Act V of 1908) deal with the execution of decrees.

Definition of Court which passed a decree.

“Section 37. The expression ‘Court which passed a decree,’ or words to that effect, shall, in relation to the execution of decrees,⁴ unless there is anything repugnant in the subject or context, be deemed to include—

“(a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

“(b) Where the Court of first instance has ceased to exist or to have jurisdiction⁵ to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time

¹ Act V of 1908, s. 86.

² See *Bank of Bengal v. Saratchandra Mitra* (1918), 4 Pat. L. J., 141; [1919 Pat.], 155.

³ Act V of 1908, Sch. I, O. 21, r. 8.

⁴ The provisions as to decrees include orders, Act V of 1908, s. 36.

⁵ *Jagannath Prasad Singh (Raja) v. Sheonandan Sahay* (1921), 6 Pat. L. J., 804; *Udit Narain Chaudhuri v. Mathura Prasad* (1908), 35 Cal., 974; 12 C. W. N., 859; *Venkatasami Naik v. Sivanu Mudali* (1918), 42 Mad., 461.

of making the application for the execution of the decree, would have jurisdiction to try such suit."

As to the case of the transfer of the territorial jurisdiction of the Court which passed the decree to another Court, see *Seeni Nadan v. Muthusamy Pillai* (1919), 42 Mad. 821, overruling *Subbiah Naiker v. Ramanathan Chettiar* (1914), 37 Mad. 462.

"Section 38. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Court by which decree may be executed.

"Section 39.—(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court: Transfer of decree.

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

"(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction."

"Order XXI, rule 5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed." Mode of transfer.

If the decree is in that case sent to a Court other than the District Court, the proceedings of such former Court in execution are without jurisdiction.¹

¹ *Kunja Behari Singh v. Tarapada Mitra* (1918), 4 Pat. L. J., 49.

Powers of Court in executing transmitted decree.

"Section 42. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself."¹

Appeal from orders in executing such decrees.

A Court executing a decree cannot question the jurisdiction of the Court which passed the decree,² or the merits or binding nature of the decree,³ and cannot alter the decree.⁴

Decree of British Courts in places to which this part does not apply or in foreign territory.

"Section 43. Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

Execution in British India of decrees of Courts of Native States.

"Section 44. The Governor-General in Council may by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with His Majesty, and not established or continued by the authority of the Governor-General in Council, or any class of such decrees may be executed in British India as if they had been passed by the Courts of British India.

Sending of decrees of British Indian

"Section 45. So much of the foregoing sections of this part as empowers a Court to send a decree for execution to

¹ See *Adhar Chandra Gope v. Pulin Chandra Shaha* (1914), 19 C. W. N., 1085.

² *Hari Govind v. Narsingrao Konherra* (1918), 38 Bom., 194; 16 Bom. L. R., 30; *Bindeswari Charan Singh (Maharaj Kumar) v. Lakpat Nath Singh* (1910), 15 C. W. N., 725.

³ *Girish Chunder Lahiri v. Shoshi Shikareswar Roy* (1900), 27 I. A., 110, at p. 124; 27 Calo., 951, at p. 967; 4 C. W. N., 631, at p. 643; 2 Bom. L. R., 709; *Ramchandra v. Jayanta* (1920), 45 Bom., 508; 22 Bom. L. R.,

1409; *Ramnath v. Gajanan* (1920), 45 Bom., 946; *Gumanji v. Vishwanath* (1921), 23 Bom. L. R., 1072; *Dattatraya v. Purshottam* (1921), 46 Bom., 635; 24 Bom. L. R., 1.

⁴ *Appa Rao v. Krishna Ayyangar* (1901), 25 Mad., 537; *Hurro Doorga Chowdhurani v. Surut Soondari Debi (Maharani)* (1881), 9 I. A., 1; 8 Calo., 382; *Udwant Singh v. Tokhan Singh* (1901), 28 I. A., 57; 28 Calo., 853; 3 Bom. L. R., 318; *Dattatraya v. Purshottam* (1921), 46 Bom., 635; 24 Bom. L. R., 1.

another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State to which the Governor-General in Council has, by notification in the Gazette of India, declared this section to apply."

Courts to British Courts in Native States.

This applies to the Court of the Political Agent at Sikkim.¹

As to the tributary Mahals of Orissa, see *Khatoo Sahoo v. Ratan Mahanti* (1902), 6 C. W. N., 578.

"Section 47.—(1) All questions arising between the parties to the suit² in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by separate suit.³

Questions in execution of decree.

"(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional Court fees.

"(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

"*Explanation.*—For the purposes of this section, a plaintiff, whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

"Section 54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

Partition of estate or separation of share.

This section does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for.⁴

¹ *Zamil Ahmed v. Maharajah of Sikkim* (1911), 38 Calc., 859.

² *Parasurama Ayyar v. Seshier* (1903), 27 Mad., 504.

³ *Ram Labhaya v. Mukanda Mal-*

Kapur Chand (1922), 3 Lahore, 319, and cases there cited.

⁴ *Jugodishury Deba v. Kailash Chundra Lahiry* (1897), 24 Calc., 725; 1 C. W. N., 374.

It has been held in Bombay that a Civil Court cannot control or reopen a partition made by the Collector.¹ A different view has been entertained in Madras.² It is submitted that the Bombay view is correct.

In Bengal the execution of a decree by the Collector is subject to the restrictions contained in the Estate Partition Act, 1897.³

Property attached in execution of decrees of several Courts.

“Section 63.—(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

“(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.”

This section only applies as between Civil Courts of different grades or as between Revenue Courts of different grades. It cannot apply where the conflict is between a Civil Court on the one hand and a Revenue Court on the other.⁴

Power to prescribe rules for transferring to Collector execution of certain decrees.

“Section 68.⁵ The Local Government may declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector.”⁶

After such transfer application as to the execution should be made to the Collector,⁷ as he is alone responsible.⁸ As to the execution of decrees against land in Coorg, see Regulation I of 1899, section 186.

Rules of procedure.

“Section 70.—(1) The Local Government may make rules consistent with the aforesaid provisions :

¹ *Bhimangada v. Hanmant Run-gappa* (1918), 42 Bom., 689; 20 Bom. L. R., 411; *Shrinivas Hanmant v. Gurunath Shrinivas* (1890), 15 Bom., 527.

² *Anantha Bhatta v. Holey Deyyu* (1896), 19 Mad., 497.

³ Ben. Act V of 1897, s. 12.

⁴ *Roshan Lal v. Muhammad Mashkur Ali Khan* (1921), 48 All., 612.

⁵ As amended by Act XXXVIII of 1920, Sch. I.

⁶ *Fatmatul Kubra v. Achehi Begam* (1918), 36 All., 83.

⁷ *Ragho Chandrarao v. Hanmati Chandrarao* (1918), 37 Bom., 488; 15 Bom. L. R., 889.

⁸ *Bhurchand Hansraj v. Vira Champa* (1912), 37 Bom., 82; 14 Bom. L. R., 787.

“(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;

“(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;

“(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal, and revision by, superior revenue authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

“(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.”

Jurisdiction of Civil Courts barred.

It is for the Collector to determine the best mode of satisfying the decree, and the whole execution is transferred to him.¹ It is for the Civil Court to determine whether the decree has been satisfied or not.²

“Section 71. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.”

Collector deemed to be acting judicially.

“Section 84.—(1) A foreign State may sue in the Courts of British India:

When foreign States may sue.

“Provided that:

(a) it has been recognised by His Majesty or by the Governor-General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

¹ *Bhurchand Hansraj v. Vira Champa* (1912), 37 Bom., 32; 14 Bom. L. R., 787; *Ragho Chandrarao v. Hanmati Chandrarao* (1913), 37 Bom., 488; 15 Bom. L. R., 389; *Shrinivas*

Appacharya v. Jagadevappa (1918), 42 Bom., 621; 20 Bom. L. R., 706.

² *Bhurchand Hansraj v. Vira Champa* (1912), 37 Bom., 32; 14 Bom. L. R., 787

"The Court shall take judicial notice of the fact that a foreign State has not been recognised by His Majesty or by the Governor-General in Council."

Suits against
Princes, Chiefs,
Ambassadors or
Envoys.

"Section 86.—(1) Any such Prince or Chief and any Ambassador or Envoy of a foreign State may with the consent of the Governor-General in Council, certified by the signature of one of the Secretaries to the Government of India (but not without such consent),¹ be sued in any competent Court.

"(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, Ambassador, or Envoy may be sued; but it shall not be given unless the Prince, Chief, Ambassador or Envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immovable property situate within those limits and is to be sued with reference to such possession or for money charged thereon.²

"(3) No such Prince, Chief, Ambassador, or Envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, Ambassador, or Envoy.

"(4) The Governor-General in Council may, by notification in the Gazette of India, authorise a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, Ambassador, or Envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor-General in Council and a Secretary to the Government of India respectively.

"(5) A person may, as a tenant of immovable property, sue, without such consent as is mentioned in this section, a Prince, Chief, Ambassador, or Envoy from whom he holds or claims to hold the property."

¹ *Narayana Moothad. v. Cochin Sirkar* (1915), 89 Mad., 681; *ibid.* (1918), 88 Mad., 685; *Maharaja of Jaipur v. Lalji Sahai* (1907), 25 All., 379.

² This does not include a claim for maintenance: *Beer Chunder Manikya v. Nobodeep Chunder (Rajcoomar)* (1888), 9 Calc., 535; 12 C. L. R., 465.

It has been held that the consent is required before the suit can be instituted, and cannot be given afterwards.¹ As to waiver of consent, see *ante*, p. 7.

"Section 92.—(1) In case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature,² or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust³ and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government,⁴ within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

Suits relating to public charities.

- (a) removing any trustee ;⁵
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust ;
- (f) authorising the whole or any part of the trust property to be let, sold, mortgaged, or exchanged ;
- (g) settling a scheme ;
- (h) granting such further or other relief as the nature of the case may require."

¹ *Chandulal v. Awad* (1896), 21 Bom., 351. See, however, *Ledgard v. Bull* (1886), 13 I. A., 184, at p. 185 ; 9 All., 191, at p. 203, and cases, *ante*, pp. 7, 8.

² As for instance a trust for a Hindu idol or temple: *Manohar Ganesh Tambekar v. Lakhmiram Govindram* (1887), 12 Bom., 247. See Trevelyan's Hindu Law, 2nd ed., 585 ; *Rajkeshwar Singh v. Basdeo Narayan Singh*, [1921 Pat.], 6. As to the duty of a Subordinate Judge when a question relating to a charitable trust arises in a case before him, see *Bayaji Jagannath v. Govindlal Kasandas* (1916), 40 Bom., 439 ; 18 Bom. L. R., 335.

³ See *ibid*.

⁴ This does not justify an order that a particular litigation then pending should be transferred to a particular Judge: *Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry* (1911), 89 Cal., 146 ; 16 C. W. N., 44.

⁵ *Hansraj Laddashet v. Anant Padmanabh* (1918), 42 Bom., 742 ; 20 Bom. L. R., 954. Cf. *Husseinmian (Sayad) v. Collector of Kaira* (1895), 21 Bom., 48. This does not include a suit for a declaration that the defendant is not a trustee of a temple: *Nilkanth v. Ramkrishna* (1921), 46 Bom., 101 ; 23 Bom. L. R., 876.

This section has no application to suits by trustees¹ or others to recover trust property, or to assert private rights,² or for other purposes not mentioned in the section.³ So far as the section applies, it precludes any other suit.⁴

As to the Religious Endowments Act, 1863, see *post*, chapter xlix.

As to a transfer of the case to the Additional District Judge, see *Mahomed Musa v. Abul Hassan Khan* (1914), 41 Calc. 866; 18 C. W. N., 612.

The fact that a question of this kind may arise in an administration suit does not take away the jurisdiction of a Subordinate Judge to try such suit.⁵

Arrest or
attachment
outside
district.

"Section 136.—(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment,⁶ and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

"(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of arrest or attachment."

A warrant may issue although the defendant does not reside within the limits of the jurisdiction.⁷

Transfer of
business.

"Section 150. Save as otherwise provided, where the

¹ *Vishvanath Govind Deshmane v. Rambhat* (1890), 15 Bom., 148.

² *Budree Das Mukim v. Chooni Lal Johurry* (1906), 33 Calc., 789; 10 C. W. N., 581; *Muhammad Abdul Majid Khan v. Ahmad Said Khan* (1919), 35 All., 459; *Ghelabai Gavri-shankar v. Uderam Icharam* (1911), 36 Bom., 29; 13 Bom. L. R., 989; *Appanna Poricha v. Narasingha Poricha* (1923), 45 Mad., 113.

³ See *Augustine v. Medlycot* (1892), 15 Mad., 241.

⁴ S. 92 (3); *Saiyid Ali v. Ali Jan* (1912), 35 All., 98; *Ramados v. Hanu-*

mantha Rao (1911), 36 Mad., 364; *Nilkanth v. Ramkrishna* (1921), 46 Bom., 101; 23 Bom. L. R., 876, dissenting from *Subramania Pillai v. Krishnaswami Somayajiar* (1919), 42 Mad., 668; *Ali Jafar (Mufti) v. Fasal Husain Khan* (1922), 44 All., 622.

⁵ *Bapuji Jagannath v. Govindlal Kasandas Shah* (1916), 40 Bom., 439; 18 Bom. L. R., 385.

⁶ *Ram Pertab Jhowar v. Madho Bai* (1902), 7 C. W. N., 216.

⁷ *Krishna Prasad v. Bidya Nanda* (1917), 3 Pat. L. J., 95.

business of any Court is transferred¹ to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.”²

As to the appellate *forum* in the case of transfer, see *Subbayya v. Rachayya* (1914), 87 Mad. 477; *Chaturi Singh v. Rania (Musammat)* (1918), 40 All. 525; *Sankararama v. Padmanabha* (1912), 88 Mad. 25.

The 1st Schedule of the Code of Civil Procedure (Act V of 1908) contains the following provisions with regard to an application for review of judgment:—

“Order 47, rule 1. Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

“Rule 2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of a decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any

¹ As to an assignment under Act XII of 1887, s. 13 (2), see *ante*, p. 109.

² *Subbiah Naicker v. Ramanathan Chettiar* (1914), 87 Mad., 462; *Amiruddin Mullick v. Atarmani Dasi*

(1920), 47 Calc., 1100; 24 C. W. N., 899; *Jagannath Prasad Singh (Raja) v. Sheonandan Sahay* (1921), 6 Pat. L. J., 304.

such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor."

Application for review in Court consisting of two or more Judges.

"Rule 5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.¹

"Rule 6.—(1) Where the application for a review is heard by more than one Judge and the Court be equally divided, the application shall be rejected.

"(2) Where there is a majority, the decision shall be according to the opinion of the majority.

Appeal.

"Rule 7.—(1) An order rejecting an application for a review shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

- (a) in contravention of the provisions of rule 2, which prescribes to whom an application for a review may be made;
- (b) in contravention of the provisions of rule 4, which prescribes when such application is to be rejected;
- (c) after the expiration of the prescribed period of limitation and without sufficient cause.

"Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit."

¹ See *Jagat Chandra Acharya v. Shyama Charan Bhattacharya* (1917),

22 C. W. N., 550; *Chhajju v. Neki* (1922), 3 Lahore, 127.

CHAPTER XXVIII.

APPEALS UNDER THE CODE OF CIVIL PROCEDURE.

A RIGHT of appeal does not exist unless it be given by a legislative enactment.¹ Right given by
Legislature.

Where an appeal lies, the Court of Appeal cannot limit the grounds of appeal.²

Where there is no appeal there may be a power of revision given to the High Court.³

An Appellate Court has no seisin of an appeal, and cannot make any order in respect of it until the order or decree of the lower Court has been drawn up⁴ and an appeal has been filed.⁵ When the Appellate Court has seisin of the appeal, the Court below ceases to have power to stay execution.⁶ Seisin of
Appeal.

An appeal lies from the decree and not from the judgment, so no appeal lies from a decree which does not in some way or other adversely affect the appellant.⁷

No appeal lies from an award of an arbitrator,⁸ even when a Judge has acted as arbitrator.⁹ Arbitration.

An appeal may be barred by an arrangement that the parties are to be bound by the finding of the Court.¹⁰

¹ *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11 Mad., 26; *Rangoon Botatoung Company v. Collector, Rangoon* (1912), 39 I. A., 197; 40 Calc., 21; 16 C. W. N., 961; 14 Bom. L. R., 838.

² *Lukhi Narain Serowgi v. Ram Chandra Bhuiya (Sri)* (1911), 15 C. W. N., 921.

³ *Post*, chap. xxix.

⁴ *Divali (Bai) v. Shah Vishnav Manordas* (1909), 34 Bom., 182; *Kaluram Pirchand v. Gangaram Sakharam* (1918), 38 Bom., 331; 16 Bom. L. R., 67.

⁵ See *Purshottam Saran v. Hargu Lal* (1920), 43 All., 198.

⁶ *Saty Shankar Ghoshal v. Maharaj Narain Sheopuri* (1919), 35 All.,

119.

⁷ See *Secretary of State v. Saminatha Kounden* (1911), 37 Mad., 25; *Krishna Chandra Goldar v. Mohesh Chandra Saha* (1905), 9 C. W. N., 584. Cf. *Pan Kooer (Mussumat) v. Bhugwunt Kooer* (1878), 6 N. W. P., 19.

⁸ *Baikanta Nath Goswami v. Sita Nath Goswami* (1911), 38 Calc., 421.

⁹ *Saradindu Roy (Kumar) v. Bhagabati Debya Chowdhurani* (1906), 10 C. W. N., 835; *Zain (Sayad) v. Kalabhai* (1899), 28 Bom., 752; 1 Bom. L. R., 366; *Nidamarthi Mukhanti v. Thammana Ramayya* (1902), 26 Mad., 76. See *post*, p. 520.

¹⁰ *Shahsadi Begam v. Muhammad Ibrahim* (1920), 43 All., 266.

Where a question arises whether there was in fact,¹ or in law² a submission or an award, there is to that extent an appeal.

Decree of
award.

No appeal lies from a decree (either original or appellate³) passed in accordance with an award whether the award was made in a suit⁴ or without the intervention of the Court;⁵ except in so far as the decree is in excess of, or not in accordance with, the award.⁶

As to an order refusing to file an award, see *post*, p. 346.

The Civil Procedure Code⁷ makes the following provisions for appeals.

As to appeals under the Letters-Patent of the High Courts, see *ante*, pp. 89, 75, 81, 87, 98.

Appeals from Original Decrees.

Appeal from
original decree.

"Section 96.—(1) Save where otherwise expressly provided in the body of the Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any

¹ *Lachman Das v. Brijpal* (1884), 6 All., 174; *Sashī Charan Chatterjee v. Tarak Chandra Chatterjee* (1871), 8 B. L. R., 815; 15 W. R. F. B., 9; *Husananna v. Linganna* (1895), 18 Mad., 428.

² *Debendra Nath Shaw v. Aubhoy Churn Bagchi* (1883), 9 Cal., 905; 12 C. L. R., 525; *Pugardin v. Moidin* (1882), 6 Mad., 414; *Suppu v. Govindacharyar* (1887), 11 Mad., 85; *Venkayya v. Venkatappayya* (1891), 15 Mad., 848; *Nandram Daluram v. Nemchand Jadavchand* (1892), 17 Bom., 357; *Kali Prosanno Ghose v. Rajani Kant Chatterjee* (1897), 25 Cal., 141; *Mahomed Wahiduddin v. Halkiman* (1898), 25 Cal., 757; 2 C. W. N., 529; *Boonjad Mathoor v. Nathoo Shahoo* (1877), 3 Cal., 375; 1 C. L. R., 455; *Ibrahim Ali v. Mohsin Ali* (1896), 18 All., 422; *Saturjit Pertap Bahadoor Sahi v. Dulhin Gulab Koer* (1897), 24 Cal., 469; *Muhammad Abid v. Muhammad Asghar* (1885), 8 All., 64. See, however, *Krishnan Chetti v. Muthu Palandi Vacha Mahali Tevar* (1898),

22 Mad., 172.

³ *Naurang Singh v. Sadapal Singh* (1887), 10 All., 8.

⁴ Act V of 1908, Sch. II, para. 16; *Shibkristo Daw and Co. v. Satish Chandra Dutt* (1912), 39 Cal., 822; *Ghulam Jilani v. Muhammad Hussan* (1901), 29 I. A., 51; 29 Cal., 167; 6 C. W. N., 226; 4 Bom. L. R., 161; *Ram Narain Ram v. Pati Ram Tewary* (1916), 1 Patna L. J., 90; *Lutawan v. Lachya* (1913), 86 All., 69; *Khudiram Mahato v. Chandicharan Mahato* (1916), 1 Pat. L. J., 306; *Krishnan Chetti v. Muthu Palandi Vacha Mahali Tevar* (1898), 22 Mad., 172; *Kombi Achen v. Pangsi Achen* (1897), 21 Mad., 405; *Jawahar Singh v. Mul Raj* (1886), 8 All., 449; *Bihari Lal v. Chunni Lal* (1907), 29 All., 457.

⁵ Act V of 1908, Sch. II, para. 21.

⁶ See *Ajudhia Prasad v. Badar-ul-Husain* (1917), 39 All., 489; *Jai Narain-Babu Lal v. Narain Das-Jaini Mal* (1922), 3 Lahore, 296; Act IX of 1899, s. 16 (2).

⁷ Act V of 1908.

Court exercising original jurisdiction to the Court authorised to hear appeals from the decision of such Courts.

"(2) An appeal may lie from an original decree passed *ex parte*."¹

The pendency of such appeal does not prevent an application to the lower Court to set aside the decree.²

"(8) No appeal shall lie from a decree passed by the Court with the consent of parties."³

"Section 2.—(2) 'Decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may be either preliminary⁴ or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 (questions to be determined by Court executing decree) or section 144 (application for restitution), but shall not include—

Meaning of "decree."

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

"*Explanation*.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

Compare the expression "judgment" in clause 15 of the Letters-Patent of the High Court, *ante*, pp. 51-55.

"The right of the parties in regard to matters in controversy is taken to mean general rights, such as rights in relation to status, in relation to jurisdiction, in relation to the frame of the suit, and in relation to liability to account, which, if decided, must have a general effect upon the proceedings in the suit, and can be decided preliminary to the investigation of the matters in dispute between the parties upon the merits."⁵

"Rights in controversy."

In an appeal from an original decree an appeal lies both on the law and on the facts.

Appeal from original decree.

As to the consideration of an appeal on the facts, cf. *Laljee Mahomed v. Guzdar* (1915), 48 Cal., 888; 20 C. W. N., 385.

¹ *Jethalal Girdhar v. Varajal Bhaishankar* (1921), 23 Bom. L. R., 769.

² *Abdul Ohad v. Amdali Gari* (1920), 48 Cal., 158.

³ This includes a case where the defence of limitation has been waived (*Raja of Kilikota v. Chaitana Sahu* (1920), 47 I. A., 200; 22 Bom. L. R., 1313), and also a case where a decree was passed in accordance with a compromise (*Gurcharam Singh v.*

Shibdev Singh (1921), 3 Lahore, 175.

⁴ Such as a preliminary decree for partition (*Dulhin Golab Koer v. Radha Dulari Koer* (1892), 19 Cal., 463; *Boloram Dey v. Ram Chundra Dey* (1895), 23 Cal., 279), or a decree for administration or for the taking of accounts.

⁵ *Narayan Balkrishna v. Gopal Jiv Ghadi* (1914), 38 Bom., 392, at p. 398; 16 Bom. L. R., 206, at p. 210.

The Appeal Court can review the report of a Commissioner on the facts as well as on questions of principle.¹

Suits under
special Acts.

When the ordinary Courts of the country are seised of a dispute as to the legal right to the possession of a property in land (or it is submitted where under special enactments they are dealing with matters of a civil nature which might ordinarily be the subject of a suit) in the absence of express provision the ordinary incidents of litigation under the Code of Civil Procedure which involve rights of appeal are not excluded.²

There is now an appeal from an award or part of an award under the Land Acquisition Act (I of 1894).³

Orders made
under special
Acts.

There is no appeal from, amongst others, the following orders made under special Acts:

- (a) an order made by a Judge under section 5⁴ or section 10⁵ of the Religious Endowments Act;⁶
- (b) an order passed by a competent Court on an election petition under rule 42 framed by the Local Government⁷ under the United Provinces Municipalities Act, 1900;
- (c) an order made under section 42 of the Co-operative Societies Act, 1912 (II of 1912);⁸
- (d) an order dismissing an application for the dismissal of a trustee under section 74 of the Indian Trusts Act (II of 1882).⁹

Similar reasoning would apparently exclude an appeal in the case of other orders under that Act.

- (e) An order passed under section 80 of the Guardians and Wards Act, 1890;¹⁰
- (f) an order of the taxing officer of a High Court or the clerk of a Presidency Court of Small Causes prescribing the Court fee to be paid on a memorandum of appeal;¹¹

¹ *Debendra Narain Sinha v. Narendra Narain Sinha* (1919), 24 C. W. N., 110.

² See *Secretary of State for India v. Chelikani Rama Rao* (1916), 49 I. A., 192; 89 Mad., 617; 20 C. W. N., 1811; 18 Bom. L. R., 1007. This decision apparently disposes of *Damodara Menon v. Kittappa Menon* (1911), 86 Mad., 16.

³ S. 54, as substituted by Act XIX of 1921, s. 8.

⁴ *Pritam Gir v. Basdeo Gir (Mahant)* (1920), 48 All., 55; *Somasundara Mudaliar v. Vythilinga Mudaliar* (1896), 19 Mad., 285.

⁵ *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11

Mad., 26.

⁶ Act XX of 1868, *post*, p. 489.

⁷ U. P. Act I of 1900, s. 187; now repealed by U. P. Act II of 1916; *Khunni Lal v. Raghunandan Prasad* (1913), 35 All., 450.

⁸ *Mathura Prasad v. Sheobalak Ram* (1917), 40 All., 89.

⁹ *Wilson v. MacAffee* (1896), 19 All., 131. See *post*, p. 487.

¹⁰ *Lachmi Prasad v. Baldeo Dube* (1921), 44 All., 458.

¹¹ Act VII of 1870, s. 5; *Lagan Bari Kuer v. Khakhan Singh* (1917), 8 Pat. L. J., 92; *Ram Sekhar Prasad Singh v. Sheonandan Dubey* (1922), 2 Pat., 198.

(g) a decision on a question of valuation under the Court Fees Act, 1870.¹

Except as therein provided there is no appeal from an order made under the Bengal Tenancy Act, 1885,² which is not a "decree" within the meaning of the Code of Civil Procedure.³

The Specific Relief Act, 1877,⁴ expressly excludes an appeal from an order or decree passed in any suit brought under section 9 of that Act. Suit under Specific Relief Act.

There may, however, be a power of revision by the High Court in such cases.⁵

Orders which come within the above definition of "decree"⁶ are appealable as decrees. Appealable orders.

The following are instances of such appealable orders :

- (a) an order granting or refusing probate of a will.⁷ It has been held that an order holding that a caveator had no interest to oppose the grant is not appealable;⁸
- (b) an order taking a plaint off the file on the ground that the plaintiffs were minors;⁹
- (c) an order rejecting a memorandum of appeal;¹⁰
- (d) an order dismissing a suit on account of the Court fee on the plaint being insufficient;¹¹
- (e) an order dismissing for default a suit¹² or an appeal;¹³
- (f) an order declaring that a suit has abated;¹⁴

¹ Act VII of 1870, s. 12; *Narayan Madhavrao Naik v. Collector of Thana* (1877), 2 Bom., 145; *Manohar Ganesh v. Bawa Ramcharandas* (1877), 2 Bom., 219. The High Court of Bengal has held that there is an appeal from an order rejecting a plaint for being insufficiently stamped: *Ajoodhya Pershad v. Gunga Pershad* (1880), 6 Calc., 249; 6 C. L. R., 567.

² Act VIII of 1885.

³ Act V of 1908, s. 2 (2); *Goghun Mollah v. Rameshur Narain Mahta* (1891), 18 Calc., 271; *Roghu Singh v. Misri Singh* (1894), 21 Calc., 825.

⁴ Act I of 1877, s. 9; *Sousa v. Gulam Moidin Beari* (1902), 26 Mad., 488. As to resistance and obstruction by a *bond fide* claimant, see *Nasir Ali Fakir v. Meher Ali* (1895), 22 Calc., 880.

⁵ *Vasudeva Aiyar v. Negapatam Devasthanam Committee* (1913), 88 Mad., 594; *Kedar Bans Lal Misser v. Janaki Koeri (Maharani)* (1909), 14 C. W. N., 143. See *post*, chap. xxix.

⁶ *Ante*, p. 335.

T. C. J. I.

⁷ *Mountstephens v. Orme* (1913), 35 All., 448. An appeal is also given in this case by s. 86 of Act V of 1881. Such proceedings take the form of a suit: Act X of 1865, s. 261.

⁸ *Radha Raman Chowdhry v. Gopal Chandra Chuckerbutty* (1919), 24 C. W. N., 316.

⁹ *Beni Ram Bhutt v. Ram Lal Dhukri* (1886), 18 Calc., 189; Act V of 1908 Sch. I, O. 32, r. 2.

¹⁰ *Ayyanna v. Nagabhooshanam* (1892), 16 Mad., 285; *Zamindar of Tuni v. Bennayya* (1898), 22 Mad., 155; *Gulab Rai v. Mangli Lal* (1884), 7 All., 42; *Raghunath Gopal v. Nilu Nathaji* (1885), 9 Bom., 452. See, however, *Venkatarayadu v. Rangayya Appa Rau* (1897), 21 Mad., 152.

¹¹ *Muhammad Sadik v. Muhammad Jan* (1888), 11 All., 91.

¹² *Broja Sundar Roy Chowdhury v. Moti Lal Morumdar* (1910), 14 C. W. N., 578.

¹³ *Radhanath Singh v. Chandhi Charan Singh* (1908), 80 Calc., 660.

¹⁴ *Udmi v. Hira* (1920), 1 Lahore, 582.

- (g) an order of an Appellate Court setting aside an order of withdrawal and dismissing the suit;¹
- (h) an order dismissing a suit against a defendant as an unnecessary party;²
- (i) a refusal to make a decree absolute in a mortgage suit;³
- (j) an order for mesne profits.⁴

The following orders, amongst others, are not appealable as decrees:

- (a) an order giving permission to withdraw a suit with liberty to bring a fresh one.⁵ An order on appeal from such order is a "decree";⁶
- (b) an order returning a memorandum of appeal on the ground that the value of the suit is beyond the pecuniary limits of the jurisdiction of the Judge;⁷
- (c) an order dismissing an application for the restoration of a suit dismissed for default of appearance;⁸
- (d) an order dismissing an application to sue as a pauper;⁹
- (e) an order for the enlargement of time under section 148 of the Civil Procedure Code;¹⁰
- (f) an order rejecting an appeal on the ground that security was not furnished.¹¹

Point of law. A decision on a point of law which arises in the course of the proceedings, and does not finally determine the case, is not appealable as a decree.¹²

Question in execution. An order determining a question in execution is only appealable as a decree when it conclusively determines the rights of the parties,¹³ and fulfils the conditions of section 47 of the Code.¹⁴

¹ *Abdul Hossein v. Kasi Sahu* (1899), 27 Calo., 362; 4 C. W. N., 41.

² *Rama Rao v. Raja of Pittapur* (1918), 42 Mad., 219.

³ *Bhutnath Jana v. Tara Chand Jana* (1920), 25 C. W. N., 595.

⁴ *Bhup Indar Bahadur Singh (Raja) v. Bijai Bahadur Singh* (1900), 27 I. A., 209; 23 All., 152; 5 C. W. N., 52; 2 Bom. L. R., 978; *Nandkumar Singh v. Bilas Ram* (1917), 8 Pat. L. J., 67; [1917 Pat.], 877; *Balarama Naidu v. Sangan Naidu* (1922), 45 Mad., 280.

⁵ *Jogodindro Nath v. Sarut Sundari Debi* (1891), 18 Calo., 322; *Dick v. Dick* (1898), 15 All., 169; *Ramakissor Dosaji v. Sriranga Charlu* (1898), 21 Mad., 421; *Jagdish Chaudhri v. Tulshi Chaudhri* (1898), 16 All., 19; *Genda Mal v. Pirbhu Lal* (1895), 17 All., 97; *Contrá, Gangaram v. Data Ram* (1885), 8 All., 82.

⁶ *Abdul Hossein v. Kasi Sahu* (1899), 27 Calo., 362; 4 C. W. N., 91.

⁷ *Mahabir Singh v. Behari Lal*

(1891), 13 All., 320.

⁸ *Jagdish Narain Prashad Singh v. Harbans Narain Singh* (1917), 2 Pat. L. J., 720.

⁹ *Secretary of State v. Jillo* (1898), 21 All., 188. See *Baldeo v. Gula Kuar* (1886), 9 All., 129; *Lekha v. Bhauna* (1895), 18 All., 101.

¹⁰ Act V of 1908; *Suranjan Singh v. Ram Bahal Lal* (1918), 35 All., 582.

¹¹ Act V of 1908, O. 41, r. 10, sub-r. (2); *Romes Chandra Das v. Monindra Lal Das* (1921), 26 C. W. N., 1020.

¹² *Behari Lal Pundit v. Kedar Nath Mullick* (1891), 18 Calo., 469.

¹³ *Deoki Nandan Singh v. Bansri Singh* (1911), 16 C. W. N., 124.

¹⁴ *Ante*, p. 325; *Balmer Lawrie and Co. v. Jadunath Banerjee* (1914), 42 Calo., 1; 19 C. W. N., 1202; *Sorabji Coovarji v. Kala Raghunath* (1911), 36 Bom., 156; 13 Bom. L. R., 1198. See *Jadunandan Singh v. Sheonandan Prasad Singh* (1922), 1 Pat., 644; [1922 Pat.], 200.

As determining questions relating or purporting to relate¹ to the execution of decrees the following orders are appealable as decrees :—

- (a) an order determining the period for which mesne profits are payable;²
- (b) an order dismissing for default objections to the execution of a decree;³
- (c) an order directing the release of a judgment debtor under Sch. I, Order 21, rule 40, of the Civil Procedure Code (Act V of 1908);⁴
- (d) an order disallowing an application for the arrest of a judgment debtor;⁵
- (e) an order refusing to certify an adjustment of a decree made out of Court;⁶
- (f) an order absolute for foreclosure under section 87 of the Transfer of Property Act (IV of 1882);⁷
- (g) an order under the same section extending the time for payment;⁸
- (h) an order refusing to discharge a Receiver;⁹
- (i) an order on an application by a Collector for the payment of Court fees;¹⁰
- (j) a refusal to stay execution;¹¹
- (k) an order excluding property from sale proceedings under a mortgage;¹²
- (l) an order allowing the name of a transferee to be substituted for that of the decree holder;¹³
- (m) an order by a Court to which a Small Cause Court had sent its decree for execution against immovable property;¹⁴
- (n) an order directing the sale of property in execution of a decree;¹⁵
- (o) an order respecting an objection to the valuation of property as stated in a sale proclamation;¹⁶

¹ *Latchmanan Chetty v. Ramana-
than Chetty* (1904), 28 Mad., 127.
followed in *Muthiah Chettiar v.
Govinddoss Krishnadoss* (1921), 44
Mad., 919.

² *Bhup Indar Bahadur Singh
(Raja) v. Bijai Bahadur Singh* (1900),
27 I. A., 209; 23 All., 152; 5 C.W. N.,
52; 2 Bom. L. R., 978; *Nand Kumar
Singh v. Bilas Ram* (1917), 8 Pat.
L. J., 67; [1917 Pat.], 377.

³ *Lalnarain Singh v. Mahomed
Rafuuddin* (1900), 28 Calc., 81.

⁴ Cf. *Abdul Rahiman v. Mahomed
Kasim* (1897), 21 Mad., 29.

⁵ *Rajkarni v. Karm Ilahi* (1919),
1 Lahore, 77.

⁶ *Jamna Prasad v. Mathura Prasad*
(1893), 16 All., 129; *Guruvayya v.
Vadayappa* (1894), 18 Mad., 26; Act
V of 1908, O. XXI, r. 2; *Jadunandan
Singh v. Sheonandan Prasad Singh*
(1922), 1 Pat., 644; [1922 Pat.], 200.

⁷ *Kedar Nath v. Lalji Sahai* (1889),
12 All., 61.

⁸ *Rahima v. Nepal Rai* (1892), 14
All., 520.

⁹ *Rameshwar Singh (Maharaja Sir)
v. Hitendra Singh* (1913), 8 Patna
L. J., 513.

¹⁰ *Janki v. Collector of Allahabad*
(1886), 9 All., 64.

¹¹ *Musaji Abdulla v. Damodar Das*
(1888), 12 Bom., 279.

¹² *Tara Prasanna Bose v. Nilmoni
Khan* (1918), 41 Calc., 418.

¹³ *Gulsari Lal v. Daya Ram* (1886),
9 All., 46.

¹⁴ *Atwari v. Maiku Lal* (1908), 81
All., 1.

¹⁵ *Sorabji Coovarji v. Kala Raghu-
nath* (1911), 86 Bom., 156; 13 Bom.
L. R., 1193.

¹⁶ *Lachman Pershad Singh v. Ganga
Pershad Singh* (1910), 15 C. W. N.,
713.

- (p) an order dismissing an application under Order 21, rule 2 (2), for certifying a payment out of Court.¹

The following orders in execution are not appealable as decrees, as they do not comply with the conditions of section 47 of the Code :

- (a) an order between rival decree holders which does not affect the judgment debtor ;²
- (b) an order in a dispute between the auction purchaser and the judgment debtor ;³
- (c) an order staying execution on security being given ;⁴
- (d) an order for an enlargement of time under section 148 of the Code ;⁵
- (e) an order staying or refusing to stay execution ;⁶
- (f) an order refusing to permit a decree holder to purchase at a sale held in execution of a decree ;⁷
- (g) an order refusing to confirm a sale held by the Court to realise a fine for not appearing as a witness ;⁸
- (h) an order for delivery of possession of property purchased at an execution sale ;⁹
- (i) an order dismissing an appeal for default under Order 41, rule 17, of the Code ;¹⁰
- (j) orders in a partition suit subsequent to the preliminary decree and before the final decree.¹¹

Loss on resale.

There is a difference of opinion as to whether an order under Order 21, rule 71, of the Civil Procedure Code making a defaulting purchaser liable for loss on resale is appealable. The Allahabad High Court has held that it is not appealable.¹² The High Courts at Calcutta¹³ and Madras¹⁴ have taken the opposite view. It is submitted that an appeal lies.

¹ *Jadunandan Singh v. Sheonandan Prasad Singh* (1922), 1 Pat., 644; [1922 Pat.], 200.

² *Balmer Lawrie & Co. v. Jadunath Banerjee* (1914), 42 Calc., 1; 19 C.W.N., 1202, distinguishing *Sorabji Coovarji v. Kala Raghunath* (1911), 36 Bom., 156; 18 Bom. L. R., 1198; *Jagadish Chandra Shaha v. Kripa-nath Shaha* (1908), 36 Calc., 180; *Kashi Ram v. Mani Ram* (1892), 14 All., 210.

³ *Surendra Mohini Debi v. Amareesh Chandra Chatterjee* (1912), 39 Calc., 687.

⁴ *Saraswati Barmania v. Golap Das Barman* (1918), 41 Calc., 160; 17 C. W. N., 1240; *Janardan v. Martand* (1920), 23 Bom. L. R., 1212.

⁵ *Suranjan Singh v. Ram Bahal Lal* (1918), 35 All., 582.

⁶ *Rajendra Kishore Choudhury v. Mathura Mohan Chowdhury* (1919),

25 C. W. N., 555.

⁷ *Ko Tha Hnyin v. Ma Hvin I.* (1911), 38 I. A., 126; 38 Calc., 717; 15 C. W. N., 862; 13 Bom. L. R., 694.

⁸ *Badri Prasad v. Tej Singh* (1910), 33 All., 68. See Act V of 1908, O. 16, r. 12.

⁹ *Buddhu Misir v. Bhagirathi Kunwar* (1917), 40 All., 216; *Bhagwati v. Banwari Lal* (1908), 31 All., 82; Act V of 1908, O. 21, r. 95.

¹⁰ *Rukminimayi Dasi v. Paran Chandra Bhera* (1910), 39 Calc., 841.

¹¹ *Jugodishury Debea v. Kailash Chundra Lahiry* (1897), 24 Calc., 725; 1 C. W. N., 374.

¹² *Deoki Nandan Rai v. Tapeeri Lal* (1892), 14 All., 201.

¹³ *Kali Kishore Deb Sarkar v. Guru Prosad Sukul* (1897), 25 Calc., 99.

¹⁴ *Amir Baksha Sahib v. Venkata-chala Mudali* (1895), 18 Mad., 439.

An appeal does not ordinarily lie upon a question within the discretion of the Court below, such as a mere question of costs,¹ or the admission of an appeal after time;² but where a matter of principle is involved³ or where the discretion has been exercised without consideration⁴ or arbitrarily,⁵ or where the Court has acted erroneously under a misapprehension of fact or of law,⁶ an appeal lies.

The power to apportion costs is subject to the controlling power of the Appeal Court.⁷ Where the appeal has to deal with other questions besides questions of costs, the Appeal Court can deal with any question of costs which may arise.

"Section 97. Where any party aggrieved by a preliminary decree⁸ . . . does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree." Appeal from final decree where no appeal from preliminary decree.

This provision does not apply when the preliminary decree has not been drawn up.⁹

There is nothing to prevent an appeal from a preliminary decree¹⁰ or order¹¹ after the passing of the final decree or order; but where after the passing of the final decree a party appeals from the preliminary decree, but does not appeal from the final decree, such appeal is incompetent.¹²

Similarly an appeal against an order of remand can be filed even after the date of the final decree consequential on remand.¹³

¹ Act V of 1908, s. 35. See *Keemee Bae (Mussumat) v. Latchman-Das Narrain-Das* (1837), 1 M. I. A., 470; 5 W. R. P. C., 59; *Ramakissoor Dossji v. Sriranga Charlu* (1898), 21 Mad., 421; *Keshavrav K. Joshi v. Bhavanji* (1871), 8 Bom. H. C. A. C., 142; *Contrá Gridhari Lal Roy v. Sundar Bibee* (1866), B. L. R. F. B. R., 496; *Umesh Chandra Dutt v. Bibhuti Bhushan Pal Chowdhury* (1919), 47 Calc., 67.

² *Md. Abdul Kasim v. Chaturbhuj Sahai*, [1922 Pat.], 20.

³ *Secretary of State v. Marjum Hosein Khan* (1885), 11 Calc., 859; *Bunwari Lall v. Chowdhry Drup Nath Singh* (1885), 12 Calc., 179; *Shibkumar v. Sheo Ghulam* (1921), 44 All., 209. As to a second appeal on a question of costs, see *Karam Kaur v. Kirpa Singh* (1920), 2 Lahore L. J., 310.

⁴ *Md. Abdul Kasim v. Chaturbhuj Sahai*, [1922 Pat.], 20.

⁵ *Daulat Ram v. Durga Prasad* (1898), 15 All., 333. See *Hull v.*

Paull (1919), 24 C. W. N., 352.

⁶ *Ranchordas Vithaldas v. Kasi (Bai)* (1892), 16 Bom., 676, approved of in *Khushul v. Punamchand* (1897), 22 Bom., 164.

⁷ *Tara Prosunno Mukherjee v. Satish Chandra Singh* (1896), 4 C. W. N., 90.

⁸ See *ante*, p. 335, n. 4.

⁹ *Katuram Pirchand v. Gangaram Sakharam* (1913), 88 Bom., 381; 16 Bom. L. R., 67, not following *Govind Ramchandra v. Vithal Gopal* (1912), 36 Bom., 536; 14 Bom. L. R., 560. See *Sakharam Vishram v. Sadashiv Balshet* (1918), 37 Bom., 480; 15 Bom. L. R., 382.

¹⁰ *Ramuvien v. Veerappudayan* (1912), 37 Mad., 455.

¹¹ *Lakshmi v. Maru Devi* (1911), 37 Mad., 29.

¹² *Kulada Prosad Chowdhury v. Ramananda Pattanaik* (1921), 48 Calc., 1036.

¹³ *Lakshmi v. Maru Devi* (1911), 37 Mad., 29, following *Uman Kunwari v. Jarbandhan* (1908), 80 All., 479.

As to the effect of the passing of a final decree while an appeal from a preliminary decree is pending, see *Kanhaiya Lal v. Tirbeni Sahai* (1914), 36 All., 582.

Decision where appeal heard by two or more Judges.

"Section 98.—(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges, or of the majority (if any) of such Judges.

"(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

"Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ, and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it."

This section applies to Land Acquisition Act appeals.¹

As to the case when the third Judge decides only a question other than that referred, see *Jnanendra Mohan Dutt v. Umesh Chandra Guha* (1922), 26 C. W. N., 985.

As to the effect of this section upon clause 36 of the Letters-Patent of Bengal, Bombay, and Madras, see *ante*, p. 66.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

"Section 99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect, or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction² of the Court."

For example, an omission to follow the rule that a suit shall be instituted in the Court of the lowest grade competent to try it.³

Appeals from Appellate Decrees.

Second appeal.

"Section 100.—(1) Save where otherwise expressly provided in the body of the Code or by any other law for the

¹ *Manavikraman Tirumalpad v. Collector of the Nilgiris* (1918), 41 Mad., 943.

² I.e. local or pecuniary jurisdiction, or jurisdiction with reference to

the subject-matter of the suit: *Mohesh Chunder Das v. Jahiruddi Mollah* (1901), 5 C. W. N., 509.

³ *Ante*, p. 815.

time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

“(a) the decision being contrary to law or to some usage¹ having the force of law;²

“(b) the decision having failed to determine some material issue of law or usage having the force of law;

“(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

“(2) An appeal may lie under this section from an appellate decree passed *ex parte*.”³

In second appeal the High Court must accept the facts found by the first appellate Court,⁴ unless such finding results from the misconstruction of a document or the misapplication of law or procedure;⁵ but it can refuse to accept an inference of law drawn from the facts found.⁶

As to mixed questions of law and custom, see *Milkhi v. Punni* (1921), 2 Lahore, 348.

“Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law, so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other; but the question whether the fact has been proved, when evidence for or against has been properly admitted, is necessarily a pure question of fact.”⁷

The following are grounds of second appeal:

(a) The misconstruction of a document which may be treated as a document of title,⁸ or the foundation of the suit.⁹

¹ *Ante*, p. 295.

² The existence of such usage is a mixed question of fact and law. So far as a question of fact is concerned, a High Court cannot interfere on second appeal: *Kumarappa Reddi v. Manavala Goundan* (1917), 41 Mad., 374. See *Kailash Chandra Datta v. Padmakisore Roy* (1917), 45 Cal., 285, dissenting from *Kakarla Abbaya v. Venkata Papayya Rao (Raja)* (1905), 29 Mad., 24.

³ See *Ghulam Haidar v. Jiwan* (1922), 3 Lahore, 357, following *Krishna Ayyar v. Kuppan Ayyangar* (1906), 30 Mad., 54.

⁴ *Ravi Veeraraghavulu v. Bomma Devara Venkata Narasimha* (1914), 41 I. A., 258; 37 Mad., 443; 19 C. W. N., 97; 16 Bom. L. R., 853; *Durga*

Choudhrai v. Jawahir Singh Choudhri (1890), 17 I. A., 122; 18 Cal., 23.

⁵ *Midnapur Zemindary Company v. Uma Charan Mandal* (1919), 24 C. W. N., 201; 22 Bom. L. R., 7.

⁶ *Dwarkanath Bidhyadhar v. Dambarudhar Mahapatra* (1910), 38 Cal., 278; *Rajaram v. Nanchand* (1903), 5 Bom. L. R., 225; *Ganesh v. Vithal* (1904), 6 Bom. L. R., 812.

⁷ *Nafar Chandra Pal v. Shukur* (1918), 45 I. A., 183, at p. 187; 46 Cal., 189, at p. 195; 23 C. W. N., 345, at p. 349.

⁸ *Fateh Chand (Lala) v. Kishen Kumwar (Rani)* (1912), 39 I. A., 247; 34 All., 579; 16 C. W. N., 1038; 14 Bom. L. R., 1090.

⁹ *Kuldip Narayan Rai v. Banwari Rai* (1920), 5 Pat. L. J., 251.

- (b) A question of jurisdiction,¹ as where the lower Court of Appeal has erroneously held that no appeal lies,² or that an appeal lies.³

A question of jurisdiction⁴ or any other question of law arising out of the findings of fact⁵ can be raised for the first time in second appeal.

- (c) The omission to consider the true question of fact.⁶

- (d) Where there is no evidence to support a finding of fact.⁷

- (e) Where the finding of fact has been influenced by an erroneous view of the cause of action,⁸ or where there has not been an application of sound principles to the consideration of evidence.⁹

A question whether a Hindu family has separated may be a mixed question of law and fact.¹⁰

In second appeal the High Court is not concerned with the amount¹¹ or weight¹² of evidence. If there is legally admissible evidence to support the finding of the Court below, the High Court cannot interfere with it. It can interfere if a finding of fact is based upon inadmissible evidence.¹³

- (f) An order rejecting an appeal on the ground that it was presented out of time amounts to a decree, and is appealable in second appeal.¹⁴

There is no second appeal from orders which do not amount to "decrees."¹⁵

Appeals from orders.

There is no second appeal in execution proceedings if an appeal would not lie in the suit itself.¹⁶

Matters in discretion of Court below.

A refusal to allow additional evidence to be taken, or any other order which was in the discretion of the lower Court of Appeal, is not a ground of second appeal.¹⁷

¹ See *Achha Mian Chowdhry v. Durga Churn Law (Maharajah)* (1897), 25 Cal., 146; 2 C. W. N., 187.

² *Mathura Mohan Pal v. Amiruddi Shilaloo* (1908), 8 C. W. N., 64.

³ *Bandiram Mookerjee v. Purna Chandra Roy* (1917), 45 Cal., 926. See *Raghunath Singh v. Abdhut Singh* (1911), 38 Cal., 391, where the appeal was erroneously made to a Court which was not subordinate to the High Court.

⁴ *Purkhit Panda v. Ananda Gaontia* (1908), 12 C. W. N., 1036, see *ante*, p. 6.

⁵ *Diwan Chand v. Bishen Das* (1920), 2 Lahore L. J., 255. See *Nitya Gopal Banerjee v. Nani Lal Mukherjee* (1919), 47 Cal., 990.

⁶ *Damusa v. Abdul Samad* (1919), 46 L. A., 140; 47 Cal., 107; 24 C. W. N., 81; 21 Bom. L. R., 920.

⁷ *Ibid.*

⁸ *Bala v. Shiva* (1908), 5 Bom. L. R., 85.

⁹ *Sharifa v. Mune Khan* (1901), 3 Bom. L. R., 167.

¹⁰ *Sabal Singh v. Salik Ram Singh* (1922), 44 All., 602.

¹¹ *Maulada Khan v. Abdul Sattar* (1917), 39 All., 426.

¹² *Nabendra Kishore Roy v. Rahima Banu (Srimati)* (1915), 19 C. W. N., 1015.

¹³ *Balwant Singh v. Baldev Singh* (1921), 2 Lahore, 271.

¹⁴ *Rakhal Chandra Ghosh v. Ashutosh Ghosh* (1918), 17 C. W. N., 807.

¹⁵ See *Surendra Mohini Debi v. Amarendra Chandra Chatterjee* (1912), 39 Cal., 687. Cf. *ante*, p. 835.

¹⁶ *Sant Prasad v. Bhawani Prasad* (1920), 48 All., 403.

¹⁷ *Ram Piri v. Kallu* (1900), 28 All., 121; *Durga Prasad v. Jai Narain* (1911), 38 All., 379. On this point there was a difference of opinion in *Vaithinatha Pillai v. Kuppu Thevar* (1919), 42 Mad., 787.

A decision on a question whether a default in paying instalments Waiver. under decree had been waived may be a mixed question of law and fact.¹

"Section 101. No second appeal shall lie except on the grounds mentioned in section 100.

"Section 102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit² does not exceed five hundred rupees."³

This provision has reference to the nature of the suit, and not to the jurisdiction of the Court which tried the case,⁴ or to the character it may subsequently assume by operation of the findings of the Court.⁵

As to what suits are cognizable by Provincial Courts of Small Causes, see *ante*, p. 272.

As to the finality of Small Cause Court decrees, see Act IX of 1887, s. 27, *ante*, p. 276.

There is no second appeal from an order in execution of a decree,⁶ or from an order of remand,⁷ or from an order or an application to recover the price from a defaulting purchaser under Order 21, rule 71,⁸ in a suit referred to in section 102.

This section does not bar an appeal in a suit for rent under the Madras Estates Land Act.⁹

"Section 103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal, but not determined by the lower Appellate Court."¹⁰

A point of law which was not argued in the lower Courts may be raised for the first time in second appeal if it does not require a con-

Power of High Court to determine issues of fact.

Point of law raised on appeal.

¹ *Easin Khan v. Abdul Wahab Sikdar* (1910), 15 C. W. N., 10.

² Not the amount sought to be recovered in execution: *Mohna Mal v. Tulsi Ram* (1921), 3 Lahore, 141. Cf. *Mavula Ammal v. Mavula Maracoir* (1906), 30 Mad., 212.

³ See *Kali Kamal Maitra v. Faslur Rahaman* (1910), 15 C. W. N., 454.

⁴ *Ramkrishna Yeshwant v. President, Vengurla Municipality* (1916), 41 Bom., 367; 19 Bom. L. R., 88; see *Soundaram Ayyar v. Sennia Naickan* (1900), 23 Mad., 547, overruling *Vedachala Mudali v. Ramasami Raja* (1899), 22 Mad., 229.

⁵ *Lakshmandas v. Lane* (1904), 32 Bom., 356; 6 Bom. L. R., 781.

⁶ *Manager Singh v. Khobari Bai*

(1917 Pat.), 80; *Bullov Bhattacharji (Sri) v. Baburam Chattopadhyaya* (1885), 11 Calc., 169.

⁷ *Amba Prasad v. Mushtaq Husain* (1919), 42 All., 200.

⁸ *Rajacharya v. Chemanna* (1920), 45 Bom., 228; 22 Bom. L. R., 1198.

⁹ Mad. Act I of 1908, *Zamindar of Tarla v. Kanda Barikivadu* (1920), 44 Mad., 697.

¹⁰ See *Damusa v. Abdul Samad* (1919), 46 I. A., 140; 47 Calc., 107; 24 C. W. N., 81; 21 Bom. L. R., 930; *Seturatnam Aiyar v. Venkatachala Goundan* (1919), 47 I. A., 76; 43 Mad., 567; *Chidambara Sivaprakasam v. Veerama Reddi* (1923), 49 I. A., 286; 27 C. W. N., 245.

sideration of the evidence and is based on the findings of the lower Courts.¹

Where a point of law is for the first time raised in second appeal, and it requires a finding of fact for its determination, the High Court will not deal with it: *Bhadai Sahu v. Manowar Ali (Shaikh)* (1919), 4 Pat. L. J., 645; [1920 Pat.], 91; *Chandra Mohan Datta v. Sasibala Dasi* [1922 Pat.], 89; *Ganesh v. Yeshwant* (1922), 25 Bom. L. R., 247. As to the abandonment of a point of law, see *Wasir Narain Singh (Raja) v. Bhikari Ram* (1922), 2 Pat., 207.

Appeals from Orders.

“Order.”

The expression “order” in the Civil Procedure Code means² the formal expression of any decision of a Civil Court (in exercise of either original or appellate jurisdiction³) which is not a decree.⁴

An order is appealable (1) if it amounts to a decree within the meaning of section 2 of the Civil Procedure Code,⁵ or

(2) if it be specified in the following provisions or any other enactment as appealable.

Orders from
which appeals
lie.

“Section 104.—(1) An appeal shall lie from the following orders, and, save as expressly provided in the body of this Code or by any law for the time being in force, from no other orders :

- (a) An order superseding an arbitration where the award has not been completed within the period allowed by the Court ;
- (b) an order on an award stated in the form of a special case ;
- (c) an order modifying or correcting an award ;⁶
- (d) an order filing or refusing to file an agreement to refer to arbitration ;⁷
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;⁸
- (f) an order refusing to file an award in an arbitration without the intervention of the Court ;⁹

¹ *Abdul Rahman (Sheikh) v. Shib Lal Sahu* (1921), 6 Pat. L. J., 650.

² Act V of 1908, s. 2 (14).

³ *Dalip Singh v. Kundan Singh* (1913), 36 All., 58, following *Wahidullah v. Kanhaya Lall* (1902), 25 All., 174.

⁴ This includes an order refusing an application: *Zipru v. Hari Supdushet* (1917), 42 Bom., 10; 19 Bom. L. R., 774.

⁵ *Ante*, p. 335.

⁶ The appeal only lies so far as the order modifies or corrects the award: *Rajbuns Sahay (Munshi) v. Soorjee Lall* (1911), 17 C. W. N., 617.

⁷ *Venkatachala v. Rangiah* (1911), 86 Mad., 353. There is no second appeal: *Jivan Singh v. Sawan Mal* (1919), 2 Lahore L. J., 41.

⁸ *Dinabandhu Jana v. Durgaprasad Jana* (1919), 46 Cal., 1041.

⁹ *Nainsukh Das v. Gajanand* (1920), 43 All., 348. Even after

(ff)¹ an order under section 35A of Act V of 1908 (compensatory costs)."

There is no appeal under this section from an order refusing to set aside an award which has been filed.²

"(g) An order under section 95 (compensation for obtaining arrest, attachment or execution on insufficient grounds);

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where arrest or detention is in execution of a decree;³

(i) any order made under rules for which an appeal is expressly allowed by rules.

"Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.⁴

"(2) No appeal shall lie from any order passed in appeal under this section."⁵

Sub-section (2) takes away the right of second appeal where such appeal would have been allowed under section 310A, read with section 244 of the former Civil Procedure Code, 1882 (Act XIV of 1882). Thus a second appeal does not lie in the case of an application to set aside a sale under Schedule I, Order 21, rule 89, of Act V of 1908,⁶ even if the decree holder be the auction purchaser.⁷

By Schedule I, Order 43, rule 1, an appeal lies from the following orders under the provisions of section 104, namely:—

(This rule applies whether the orders are made or purport to have been made under the following rules.⁸)

"(a) An order returning a plaint to be presented to the proper Court;⁹

decree in accordance with the award : *Khettra Nath Gangopadhyay v. Ushabala Dasi* (1914), 18 C. W. N., 381.

¹ Inserted by Act IX of 1922, s. 3.

² *Campbell & Co. v. Jeshraj Giridhari Lall* (1917), 45 Calc., 502.

³ See *Adhar Chandra Gope v. Pulin Chandra Shaha* (1914), 19 C. W. N., 1085.

⁴ Act IX of 1922, s. 3.

⁵ *Naubat Singh v. Baldeo Singh* (1911), 33 All., 479; *Asimaddi Sheikh v. Sundari Bibi* (1911), 38 Calc., 339;

15 C. W. N., 844. See *Jiwan Singh v. Sawan Mal* (1919), 2 Lahore L. J., 41; *Gurcharan Singh v. Shibdev Singh* (1921), 8 Lahore, 175.

⁶ *Asimaddi Sheikh v. Sundari Bibi* (1911), 38 Calc., 339; 15 C. W. N., 844.

⁷ *Kachu v. Trimbak* (1919), 44 Bom., 472; 22 Bom. L. R., 388.

⁸ *Muthiah Chettiar v. Govindoss Krishnadas* (1921), 44 Mad., 919.

⁹ Act V of 1908 (Civil Procedure), Sch. I, O. 7, r. 10; *Peari Sha*

- (b) an order pronouncing judgment against a party, who has failed to present a written statement, which has been called for by the Court." ¹

(This does not apply to an order making a Receiver liable.²)

- "(c) An order rejecting an application ³ (in a case open to appeal) for an order to set aside the dismissal of a suit which has been dismissed for default of appearance."

(An order granting such application is not appealable.⁴)

- "(d) An order rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*; ⁵

- (e) an order pronouncing judgment against a party who has failed to appear on the day appointed for him to answer questions; ⁶

- (f) an order dismissing a suit, or striking out a defence where a party has failed to comply with an order to answer interrogatories, or for discovery or inspection of documents; ⁷

- (g) an order for the attachment of property for non-compliance with a summons to give evidence or to produce a document; ⁸

- (h) an order pronouncing judgment against a party who refuses to give evidence when called on by the Court; ⁹

- (i) an order on an objection to the draft of a document or of an endorsement in the case of a decree for the execution of a document or the endorsement of a negotiable instrument; ¹⁰

v. *Surujmal Marwari* (1912), 17 C. W. N., 508; *Dalip Singh v. Kundan Singh* (1918), 86 All., 58; *Wahid-Ullah v. Kanhaya Lall* (1902), 25 All., 174, in which cases the plaint was returned by the Appellate Court. This does not include an order by the Appellate Court returning a memorandum of appeal for presentation to the proper Court: *Raghunath Charam Singh v. Shamo Koeri* (1908), 31 Calc., 244; *Karm Ilahi v. Hakim Shah* (1920), 2 Lahore L. J., 366.

¹ Act V of 1908, O. 8, r. 10.

² *Ganesh Lall v. Satyanarain Singh* (1919), 4 Pat. L. J., 686; [1920 Pat.], 35.

³ Act V of 1908, O. 9, r. 9.

⁴ *Maharaj Kishore Khanna v. Kiran Shashi Dasi* (1921), 49 Calc., 616.

⁵ Act V of 1908, O. 9, r. 13.

⁶ *Ibid.* O. 10, r. 4.

⁷ *Ibid.* O. 11, r. 21.

⁸ *Ibid.* O. 16, r. 10.

⁹ *Ibid.* O. 16, r. 20.

¹⁰ *Ibid.* O. 21, r. 84.

- (j) an order setting aside or refusing to set aside a sale, under rule 72 or rule 92 of Order 21 of the Civil Procedure Code (V of 1908);¹
- (k) an order refusing to set aside the abatement or dismissal of a suit in the case of the death or insolvency of parties;²
- (l) an order refusing to give leave to continue a suit in the cases of assignment, creation, or devolution of an interest pending suit."³

(It was held in *Dumi Chand v. Arja Nand* (1916), 87 All., 272, that no appeal lies from an order dismissing an application to be brought upon the record as a plaintiff.)

- “(m) An order refusing to record an agreement, compromise, or satisfaction;⁴
- (n) an order rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit which has been set aside on account of the plaintiff not having given security for costs;⁵
- (o) an order refusing to extend the time for the payment of mortgage money;⁶
- (p) orders in interpleader suits under rule 3, rule 4, or rule 6 of Order 35 of Act V of 1908;
- (q) orders for security, or on an application for a surety to be discharged, or attaching property before judgment.”⁷

(An order rejecting an appeal on the ground of failure to give security is not appealable.⁸)

- “(r) Orders for temporary injunctions or discharging, varying, or setting aside such injunctions or ordering the deposit of money, etc., in Court, or the delivery to the person to whom it is admitted to belong.”⁹

(An order refusing such injunction is appealable.¹⁰)

¹ See *Sheo Prasad Singh v. Premna Kunwar* (1917), 40 All., 122.

² Act V of 1908, O. 22, r. 9.

³ Act V of 1908, Sch. I, O. 22, r. 10. *Muthiah Chettiar v. Govind-doss Krishnadoss* (1921), 44 Mad., 919.

⁴ *Ibid.* O. 23, r. 3.

⁵ *Ibid.* O. 25, r. 2.

⁶ *Ibid.* O. 34, r. 8.

⁷ *Ibid.* O. 38, rr. 2, 8, and 6.

⁸ *Nasim v. Abdul Hamid* (1921), 8 Lahore, 80; *Firozi Begam v. Abdul Latif Khan* (1908), 80 All., 143; *Lekha v. Bhauna* (1895), 18 All., 101.

⁹ Act V of 1908, O. 39, rr. 1, 2, 4, and 10.

¹⁰ *Lachmi Narain v. Ramcharan Das* (1918), 35 All., 425.

"(s) An order appointing a Receiver,¹ or for the enforcement of a Receiver's duties."²

(This includes an order giving directions to a Receiver.³ It does not include an order granting leave to sue a Receiver for neglect of his duty,⁴ or an order simply declaring a Receiver liable.⁵)

"(t) An order of refusal to readmit or to rehear an appeal;⁶

(u) an order remanding a case where an appeal would lie from the decree of the Appellate Court;⁷

(v) an order made by any Court other than a High Court refusing the grant of a certificate that a case is a fit one for appeal to His Majesty in Council;⁸

(w) an order granting an application for review."⁹

This last is subject to Order 47, rule 7, which prescribes the cases where the order granting an application for a review is permissible.¹⁰

There is no second appeal in cases under the above rule.¹¹

There is no appeal from an order under Order 21, rule 58 (claims and objections in the case of attached property).¹²

¹ Even if no one has been appointed by name as Receiver: *Palaniappa Chetty v. Palaniappa Chetty* (1916), 40 Mad., 18; *Gobind Ram v. Ganesh Ram* (1922), 1 Pat., 625; [1922 Pat.], 250. This does not include an order merely expressing the intention to appoint a receiver: *Muhammad Askari v. Nisar Husain* (1919), 42 All., 227. It includes an order dismissing an objection to the appointment of a Receiver.

² Act V of 1908, O. 41, rr. 1, 4.

³ *Anand Das (Mohunt) v. Ram Perakash Das* (1909), 14 C. W. N., 183.

⁴ *Shrinivas v. Was* (1920), 45 Bom., 99; 22 Bom. L. R., 1126.

⁵ *Ganesh Lal v. Satya Narayan Singh (Kumar)* (1919), 4 Pat. L. J., 686; [1920 Pat.], 35.

⁶ Act V of 1908, O. 41, rr. 19, 21.

⁷ Act V of 1908, O. 41, r. 23: *Kulsum-un-nissa v. Ram Prasad* (1922), 44 All., 492; *Karam Singh v. Vir Singh* (1921), 2 Lahore, 252; *Naubat Singh v. Baldeo Singh* (1911), 88 All., 479; *Prosanno Ch. Chattopadhyaya v. Baidya Nath Misry* (1920), 24 C. W. N., 708. This does not apply to a case where the Appellate Court restored a suit which had been

dismissed because neither party appeared: *Wahid-un-nissa v. Kundan* (1918), 35 All., 427. An appeal from an order of remand cannot be entertained after the disposal of the suit on remand: *Janaki Nath Roy Chowdhury v. Promotha Nath Roy Chowdhury* (1911), 15 C. W. N., 890; *Madhu Sudan Sen v. Kamini Kanta Sen* (1905), 32 Calc., 1023; 9 C. W. N., 895; *Baikuntha Nath Dey v. Salimullah (Nawab)* (1907), 12 C. W. N., 590; *contra*, *Lakshmi v. Maru Devi* (1911), 87 Mad., 29; *Uman Kunwari v. Jarbandhan* (1908), 30 All., 479. There is not an appeal from every order of remand; *Umri v. Shah Muhammad* (1921), 3 Lahore, 218.

⁸ *Ibid.* O. 45, r. 3.

⁹ *Ibid.* O. 47, r. 4.

¹⁰ *Hari Charan Saha v. Baran Khan* (1914), 41 Calc., 746; *Sundar Mall v. Upendra Nath Seal* (1916), 1 Pat. L. J., 198.

¹¹ *Sheo Prasad Singh v. Premna Kumwar* (1917), 40 All., 122; *Kachru v. Trimbak Khemchand* (1919), 44 Bom., 472; 22 Bom. L. R., 888.

¹² *Nasir Hussain (Sheikh) v. Muhammad Ejaz Hussain* (1922), 1 Pat., 687.

Order 42 has no application to orders made under the Madras Estates Land Act (Madras Act I of 1908).¹

Section 104 and Order 48, rule 1, have no application to appeals from one of the Judges of a High Court to a Division Bench of the same Court.²

“Order 41, rule 25. Where the Court from whose decree the appeal is presented has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.”

Where Appellate Court may frame issues and refer them for trial to Court whose decree is appealed from.

Apart from this, the Appeal Court has power to remand a case for retrial.³

An order under this rule may be ignored by the Court before which the appeal ultimately comes. An order under rule 23 is on a different footing.⁴

“Order 47, rule 7.—(1) An order of the Court rejecting the application for a review shall not be appealable;⁵ but an order granting an application may be objected to on the ground that it was—

Order of rejection of review.
Objections to admission.

- (a) in contravention of the provisions of rule 2,
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

“Such objection may be made at once by an appeal against the order granting the application, or in any appeal against the final decree or order passed or made in the suit.”

“Section 105.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect, or irregularity in

Other orders.

¹ *Venkata Ramayya (Rajah) v. Veeraswami* (1917), 41 Mad., 554.

² *Toolseemoney Dassie v. Sudevi Dassie* (1899), 26 Calc., 861; 3 C. W. N., 847.

³ *Raghunandan Singh v. Jadunandan Singh* (1918), 8 Pat. L. J., 253.

⁴ *Masih-un-nissa Bibi v. Kanis Sughra Bibi* (1920), 48 All., 877.

⁵ See *Baroda Churn Ghose v. Gobind Proshad Tewary* (1895), 22 Calc., 984; *Har Nandan Sahai v. Behary Sing* (1894), 22 Calc., 3, and cases there cited.

any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal.¹

“(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand . . . from which an appeal lies does not appeal therefrom he shall thereafter be precluded from disputing its correctness.”

For instance—

(a) an order under Order 9, rule 18, of the Code, setting aside an *ex parte* decree,²

(b) an order directing partition after a preliminary decree for partition had been confirmed on appeal,³

(c) an order affecting the decision of the case.

This includes an order setting aside the award of an arbitrator, and deciding that the case should be tried by the Court.⁴

What Court to
hear appeals.

“Section 106. Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to a High Court.”

Powers.

As to the powers of an Appellate Court, see Act V of 1908, section 107; Order 41, rules 4 and 33 (as amended by Act IX of 1922, section 4).

¹ The right to appeal remains even when the order has been complied with: *Shah Jahan v. Inayat Shah* (1919), 1 Lahore, 54.

² *Nand Ram v. Bhopal Singh* (1919), 84 All., 592.

³ *Bharat Indu v. Yakub Hasan*

(1919), 85 All., 159.

⁴ *Ram Autar Tewari v. Deoki Tewari* (1915), 37 All., 456; *Achut-hayya v. Thimmaya* (1908), 81 Mad., 345; *Damodar v. Raghunath* (1902), 26 Bom., 551; *Chattar Singh v. Lekhraj Singh* (1888), 5 All., 298.

CHAPTER XXIX.

REFERENCE AND REVISION.

THE following provisions for reference and revision are to be found in the Civil Procedure Code (Act V of 1908).

Reference.

"Section 113. Subject to such conditions and limitations Reference to High Court. as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit."

"Order 46, rule 1. Where before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court."

It has been held that this rule does not authorise a reference to the High Court in a proceeding which is neither a suit nor an appeal.¹

"Rule 6.—(1) Where at any time before judgment a Court Power to refer to High Court questions as to jurisdiction in small causes. in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

"(2) On receiving the record and statement the High Court may order the Court either to proceed with the suit or to return the plaint for presentation in such other Court as

¹ *Damodara Menon v. Kittappa Menon* (1911), 36 Mad., 16.

it may in its order declare to be competent to take cognizance of the suit."

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

"Rule 7.—(1) Where it appears to a District Court that a Court subordinate thereto¹ has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall,² submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

"(2) On receiving the record and statement the High Court may pass such order in the case as it thinks fit.

"(3) With respect to any proceeding subsequent to decree in any case submitted to the High Court under this section, the High Court may make such order as in the circumstances appears to it to be just and proper.

"(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this section."

On such reference the High Court can deal with the matter on its merits.³

Revision.

We have already seen what powers of revision can be exercised by the Chartered High Courts under the Government of India Act, 1915.⁴

Section 115 of the Code of Civil Procedure⁵ empowers any High Court (an expression which includes the highest Civil Court of Appeal in any part of British India),⁶ to call for the record of any case⁷ which has been decided⁸ by any Court⁹

¹ This includes a Small Cause Court: *Ratan Bepari (Sheikh) v. Hira Lal Sarkar* (1916), 20 C. W. N., 1110. See *Madan Gopal v. Bhagwan Das* (1888), 11 All., 804.

² It is only when the District Judge comes to the conclusion that the subordinate Court has acted erroneously that a party can insist upon a reference. See *Madan Gopal v. Bhagwan Das* (1888), 11 All., 804; *Simson v. McMaster* (1890), 13 Mad., 344.

³ *Parmeshwari Dassi v. Jagat Chandra Das* (1914), 19 C. W. N., 900.

⁴ 5, 6 Geo. V. c. 61, s. 107; *ante*, p. 27.

⁵ Act V of 1908.

⁶ Act X of 1897, s. 3 (24).

⁷ The expression "case" is to be used in its broadest and most ordinary sense: *Nathuni Ram v. Sheo Koer (Mossamat)* (1918), 3 Pat. L. J., 460; [1918 Pat.], 220; *Atrani (Bai) v. Deepsing* (1915), 40 Bom., 86; 17

subordinate¹⁰ to such High Court and in which no appeal lies thereto,¹¹ and if such subordinate Court appears—

(a) to have exercised a jurisdiction¹² not vested in it by law,¹³ or

(b) to have failed to exercise a jurisdiction so vested,¹⁴ or

(c) to have acted in the exercise of its jurisdiction illegally, or with material irregularity,¹⁵

the High Court may make such order in the case as it thinks fit.¹⁶

As to the North-Western Frontier Province, see Regulation VII of 1901, s. 84 (8); *ante*, p. 280.

As to the Santhal Parganas, see Regulation V of 1898, ss. 19 (1) (*ante*, p. 180), 20 (*ante*, p. 180).

The provisions of section 115 are not exhaustive.¹⁷ As to writs of *certiorari*, see *ante*, p. 25.

In the absence of provision to the contrary these powers of superintendence and supervision can be exercised under the Over what Courts can be exercised.

Bom. L. R., 1097. It is not confined to a litigation in which there is a plaintiff who seeks to obtain particular relief in damages or otherwise against a defendant who is before the Court: *Balakrishna Udayar v. Vasudeva Aiyar* (1917), 44 I. A., 261, at p. 269; 40 Mad., 793, at p. 801; 22 C. W. N., 50, at p. 59; 19 Bom. L. R., 715, at p. 722.

* It has been held by a majority of a Full Bench of the High Court at Allahabad that this does not include a decision of a preliminary issue as to jurisdiction: *Buddhu Lal v. Mewa Ram* (1921), 43 All., 564, overruling *Bhargava v. Jagannath Bhagwandass* (1919), 41 All., 602. As to an order allowing the withdrawal of a suit, see *Bansi Singh v. Kishun Lall Thakur* (1913), 41 Cal., 632; *Nathuni Ram v. Sheo Kuer (Mossamat)* (1918), 3 Pat. L. J., 460; [1918 Pat.], 220. A High Court cannot call for the record of a case under trial: *Rami (Bai) v. Jagā Dullabhi* (1919), 44 Bom., 619.

* This has no application to a Judge acting otherwise than in a judicial capacity, but as head of his office under s. 4 of the Public Accountant's Defaults Act, 1850 (XII of 1850): *In re Cooper* (1917), 42 Bom.,

119; 19 Bom. L. R., 926. See *Gopal Singh v. Court of Wards* (1867), 7 W. R. C. R., 430.

¹⁰ A High Court cannot revise decisions of its own Judges: *Debendra Nath Das v. Bibudhendra Mansingh* (1915), 43 Cal., 90; *In re Premji Trikumdas* (1898), 17 Bom., 514.

¹¹ Either by way of first or second appeal: *Tirupati Raju v. Vissam Raju* (1896), 20 Mad., 155; *Mathura Nath Sarkar v. Umesh Chandra Sarkar* (1897), 1 C. W. N., 626. There is no objection to a revision at the hearing of an appeal from a decree from which no appeal lies: *Shankar Lal v. Muhammad Amin* (1922), 44 All., 534.

¹² As to the meaning of "jurisdiction," see *post*, pp. 360, 361.

¹³ *Post*, pp. 361, 362.

¹⁴ *Post*, pp. 362-364.

¹⁵ *Post*, pp. 364-369.

¹⁶ This means at least any order which would have been made if there had been an appeal. See *Muhammad (Moulvi) v. Husain (Syed)* (1890), 3 All., 203.

¹⁷ *Besant v. Advocate-General of Madras* (1919), 46 I. A., 176; 43 Mad., 146; 23 C. W. N., 986; 21 Bom. L. R., 867.

Civil Procedure Code and the Government of India Act, in respect of all Civil Courts in the Province,¹ acting judicially.

Such jurisdiction can be exercised in respect of the decisions of the ordinary Civil Courts, and also in respect of the following (amongst other) cases :

Small Cause Courts.

(a) Small Cause Courts, both in the Presidency Towns² and in the Provinces.³

Revisional jurisdiction in respect of the Presidency Small Cause Court at Calcutta is vested in a single Judge sitting on the original side of the High Court.⁴

Santhal Parganas.

(b) Cases of over Rs.1,000 in value in the Santhal Parganas.⁵

Mamlatdars Act.

(c) Decisions of a Collector exercising judicial functions under the Mamlatdars Act (Bombay II of 1906).⁶

Hereditary offices.

(d) The grant of a certificate by a Collector under section 10 of the Bombay Hereditary Offices Act (Bombay Act III of 1874).⁷

Bengal Rent Act.

(e) Orders passed by Collectors and Deputy Collectors under the Bengal Rent Act (X of 1859).⁸

¹ See Act V of 1908, s. 3. That section is not exhaustive: *Purshotam Janardhan v. Mahadu Pandu* (1912), 87 Bom., 114; 14 Bom. L. R., 947.

² *Rangiah Naidu v. Rungiah* (1908), 81 Mad., 490, and cases there cited; *Ralli v. Parmanand Jewraj* (1889), 18 Bom., 642. See Act XV of 1882, s. 6, ante, p. 255.

³ *Abdul Majid v. Bedyadhar Suran Das* (1916), 39 All., 101; *Umesh Chandra Palodhi v. Rakhal Chandra Chatterjee* (1911), 15 C. W. N., 666. See Act IX of 1887, ss. 25, 28, ante, pp. 275, 276.

⁴ *Ramadhin Bania v. Sewbalak Singh* (1910), 37 Calc., 714; 14 C. W. N., 806; *Sarat Chandra Singh v. Brojolah Mukerji* (1908), 30 Calc., 986; 7 C. W. N., 848. See *Shamsher Mundul v. Ganendra Narain Mitter* (1902), 29 Calc., 498. In *Haladhar Maiti v. Choytonna Maiti* (1908), 30 Calc., 588; 7 C. W. N., 547, the Chief Justice constituted a special Bench for the purpose of hearing an application for revision of an order of the Small Cause Courts. He stated, it is submitted erroneously, that such applications had invariably been made to the Chief Justice. See *Re Fakir* (1908), 7 C. W. N., 848.

⁵ *Sardhari Sah v. Hukam Chand*

Sah (1914), 41 Calc., 876; 18 C. W. N., 662; *Dungaram Marwary v. Rajkishore Deo* (1890), 18 Calc., 138.

⁶ *Purshottam Janardhan v. Mahadu Pandu* (1912), 87 Bom., 114; 14 Bom. L. R., 947; *Collector of Thana v. Bhaskar Mahadev Sheth* (1884), 8 Bom., 264, at pp. 267, 268.

⁷ *Collector of Thana v. Bhaskar Mahadev Sheth* (1884), 8 Bom., 264.

⁸ *Nilmoni Singh Deo Bahadoor (Rajah) v. Taranath Mookerjee* (1882), 9 I. A., 174; 9 Calc., 295; 12 C. L. R., 361; *Chaitan Patgosi Mahapatra v. Kunja Behari Patnaik* (1911), 38 Calc., 892; 15 C. W. N., 863, differing from *Huro Mohun Mookerjee v. Kedarnath Doss* (1866), 5 W. R., Act X, R. 25; *Gobind Ramanuja Das (Mohant) v. Lakhun Parida* (1906), 11 C. W. N., 112; *Bhyrub Chunder Mookerjee v. Shama Soonderee Deba* (1866), 6 W. R., Act X, R. 68; *Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry* (1867), 7 W. R. C. R., 520; *Deanutoollah v. Nasim Sidhee (Nawab)* (1868), 10 W. R. C. R., 341; *Gudadhur Chatterjee v. Nund Lall Mookerjee* (1869), 12 W. R. C. R., 406; *Rooknee Roy v. Amrith Lall* (1870), 14 W. R. C. R., 264; *In the matter of Nassir Jan (Srimati)* (1871), 7 B. L. R., 144; 15 W. R., 418.

(f) Decrees and judicial orders under the Bengal Tenancy Act Bengal Tenancy Act.
(VIII of 1885).¹

(g) An order made by a Civil Court on a reference under section 55 Land registration.
of the Land Registration Act (Bengal Act VII of 1876).²

(h) Orders in proceedings or applications for enhancement of rent Enhancement
under section 27³ or section 218⁴ of the Chota Nagpur Tenancy Act a settlement of
(Bengal Act VI of 1908). rent.

As to proceedings under section 87 of that Act for settlement of fair rent, see *post*, p. 573.

(i) Orders in suits, appeals, and other proceedings under the Madras Estates Land Act (Madras Act I of 1908).⁵

(j) Orders made by a Judge exercising powers under the Land Land Acquisition.
Acquisition Act (I of 1894).⁶

The High Court has no power to interfere with the action of the Collector in making his award,⁷ as he is not acting judicially therein; but it has been held⁸ that the Collector is acting judicially when he declines to make a reference to the Civil Court under the Act.

(k) An order made in any appeal decided by a District Court under Insolvency.
the Provincial Insolvency Act (V of 1920).⁹

(l) An order made by a District Court under section 10 of the Religious Endowments Act (XX of 1863).¹⁰

An order made under section 18 of that Act is not subject to revision.¹¹

(m) Cases under the Legal Practitioners Act (XVIII of 1879).¹²

(n) An order settling terms of a proclamation under the Civil Procedure Code (Act V of 1908), Order 21, rule 66.¹³

¹ *Tarini Charan Banerjee v. Chandra Kumar Dey* (1910), 14 C. W. N., 788; *Horananda Banerjee v. Ananta Dasi* (1904), 9 C. W. N., 492; *Bhagabati Bewa v. Nanda Kumar Chuckerbutty* (1908), 12 C. W. N., 835; *Jugobundhu Pattuck v. Jadu Ghose* (1887), 15 Calc., 47.

² *Umatul Mehdi v. Kulsum* (1907), 35 Calc., 120; 12 C. W. N., 16; *Rameshwar Singh v. Raghunath Singh* (1908), 35 Calc., 571.

³ *Kartik Chandra Ojha v. Gora Chand Mahito* (1913), 40 Calc., 518.

⁴ *Lal Nilmani Nath Sahi Deo v. Udaï Nath Sahi Deo* [1919 Pat.], 60.

⁵ *Ramasami Goundan v. Kali Goundan* (1918), 42 Mad., 310; *Paramaswamy Aiyangar v. Alamelu Natthiar Ammal* (1918), 42 Mad., 76.

⁶ *In the matter of Abdool Ali (Syud)* (1875), 15 B. L. R., 197; *Gobindaranee Dasee v. Brinda Raneer Dasee* (1908), 35 Calc., 1104; *Joseph v. The Salt Company* (1892), 17 Mad., 371.

⁷ *British India Steam Navigation*

Co. v. Secretary of State (1910), 38 Calc., 280; 15 C. W. N., 87. See *Eera v. Secretary of State* (1905), 32 I. A., 93; 32 Calc., 605; 9 C. W. N., 454; 7 Bom. L. R., 422.

⁸ *Administrator-General of Bengal v. Land Acquisition Collector* (1906), 12 C. W. N., 241; *Krishna Das Roy v. Land Acquisition Collector of Pabna* (1911), 16 C. W. N., 327.

⁹ Act V of 1920, s. 75. See *Allahabad Bank v. Murlidhar* (1912), 34 All., 442.

¹⁰ *Balakrishna Udayar v. Vasudeva Aiyar* (1917), 44 I. A., 261; 40 Mad., 793; 22 C. W. N., 50; 19 Bom. L. R., 715.

¹¹ *Ramanathan Chettiar v. Ananthanarayana Aiyar* (1909), 38 Mad., 412.

¹² *In the matter of Kalka Prasad* (1917), 40 All., 158, following *Bavu Sahib v. District Judge of Maduru* (1908), 26 Mad., 596.

¹³ *Raghunath Sahay (Munshi) v. Hazari Sahu* (1917), [1917 Pat.], 105.

(o) An order under the Civil Procedure Code (Act V of 1908), Order 28, rule 1, allowing the withdrawal of a suit with leave to bring a fresh suit.¹

(p) An order determining that a caveator had no interest to oppose a will.²

(q) An order under the Calcutta Rent Act, 1920.³ In this case the Appellate side of the Bengal High Court exercises jurisdiction.⁴

(r) An order made by a District Judge under the Succession (Property Protection) Act, 1841,⁵ or under the Bombay Administration of Estates Regulation, 1827.⁶

(s) An order purporting to be made under the Guardians and Wards Act, 1890.⁷

Aden.

The Bombay High Court can exercise powers of revision in the case of decisions of the Resident at Aden in the exercise of his civil jurisdiction under the Aden Act (II of 1864), in cases over Rs.1,000 in value.⁸

Zanzibar.

It was held by a majority of the Judges of a Full Bench of the Bombay High Court that that Court could not exercise revisional jurisdiction in civil matters tried by H.B.M. Consul at Zanzibar, although it could hear appeals from the decisions of that Court by the Zanzibar Order in Council of 1884.⁹

A High Court cannot interfere with the following orders in revision :

Municipal Election.

(a) An order made by a District Judge, under section 8 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884), refusing to set aside an election,¹⁰ or an order made refusing compensation under section 160, clause 3 of the Bombay District Municipalities Act (Bombay Act III of 1901).¹¹

Agra Tenancy Act.

(b) An order passed by an Assistant Collector,¹² or by a District Judge on appeal from his decision¹³ under the Agra Tenancy Act (United Provinces Act II of 1901).

¹ *Rajendra Lal Sur v. Atal Bihari Sur* (1916), 44 Calc., 454; *Nathuni Ram v. Sheo Koer (Mosammatt)* (1918), 3 Pat. L. J., 460; [1918 Pat.], 220.

² *Radha Raman Chowdhry v. Gopal Chandra Chuckerbutty* (1919), 24 C. W. N., 816. See ante, p. 387.

³ Ben. Act III of 1920, s. 15; *Allen v. Bando* (1922), 49 Calc., 981. See *H. D. Chatterjee v. Tribedi* (1921), 26 C. W. N., 78.

⁴ *Kali Dasi v. Kanai Lal De* (1921), 26 C. W. N., 52.

⁵ Act XIX of 1841. *Sato Koer v. Gopal Sahu* (1907), 34 Calc., 929; 12 C. W. N., 65.

⁶ Bom. Reg. VIII of 1827. *Vishvambhar Pandit (Shri) v. Vasudev Pandit (Shri)* (1892), 16 Bom., 708.

⁷ Act VIII of 1890. *Laxminarayan v. Parvatibai* (1919), 22 Bom. L. R., 399. In proceedings under that Act the same formality and precision of procedure is not required as in the

trial of a suit: *Khundi Devi v. Chote Lal* (1922), 44 All., 587.

⁸ *Rhimbai v. Mariam* (1909), 34 Bom., 267; 12 Bom. L. R., 149; *Municipal Officer, Aden v. Ismail (Hajee)* (1905), 33 I. A., 38; 30 Bom., 246; 10 C. W. N., 185; 8 Bom. L. R., 4.

⁹ *Khoja Shivji v. Hasham Gulam* (1895), 20 Bom., 480. See Order in Council, May 11th, 1906, s. 56.

¹⁰ *Balaji Sakharum v. Merwanjee Nourojee* (1895), 21 Bom., 279.

¹¹ *Municipality of Belgaum v. Rudrappa* (1916), 40 Bom., 509; 18 Bom. L. R., 340.

¹² *Damber Singh v. Srikrishn Das* (1909), 31 All., 445, followed in *Jamna Prasad v. Karan Singh* (1918), 41 All., 28.

¹³ *Gaj Kumar Chandar v. Salamat Ali* (1919), 42 All., 88; see post, p. 541. As to orders made under the Madras Estates Act (Mad. Act I of 1908), cf. *Velli Periya Mira v.*

(c) A proceeding for settlement of fair rent under section 85 of the Chota Nagpur Tenancy Act.¹

(d) An order passed by a District Judge under section 4 of the Public Accountant's Defaults Act, 1850 (Act XII of 1850).²

(e) An order made by the tribunal of appeal under the Bombay City Improvement Act, 1898.³

(f) An order setting aside or refusing to set aside an award of arbitrators.⁴

(g) An executive order passed by a Magistrate under the Indian Lunacy Act (VI of 1912).⁵

There is not complete agreement between the High Courts as to Interlocutory whether an interlocutory order, which is not appealable, can be the orders. subject of revision.

The difficulty arises partly from the Legislature having used the expression "case decided" without having defined the word "case," and partly from the fact that where the final decree is appealable to the High Court such interlocutory order can then be considered, and revision may be excluded by the rule that the Courts will not ordinarily interfere on revision when another remedy is available.⁶ Moreover it is argued that in those cases the words "in which no appeal lies thereto" would prohibit revision.

The Bengal High Court has held that it has jurisdiction to revise an interlocutory order, if it was made without jurisdiction or would cause irreparable injury to one of the litigants.⁷ The Patna High Court has accepted this view.⁸

In one case the Madras High Court set aside an order for taking evidence on commission on the ground that it was made without jurisdiction.⁹ An order substituting the name of the purchaser for the plaintiff has been set aside in Calcutta under section 15 of the Indian

Moidin Padsha (1886), 9 Mad., 332; *Appandai v. Srihari Joishi* (1892), 16 Mad., 451; *Venkatanarasimma Naidu v. Suranna* (1893), 17 Mad., 298.

¹ Ben. Act VI of 1908. *Uma Charan Mondol v. Midnapur Zemindary Co.* (1914), 18 C. W. N., 782.

² *In re Cooper* (1917), 42 Bom., 119; 19 Bom. L. R., 926.

³ Bom. Act IV of 1898. *Hari v. Secretary of State* (1903), 27 Bom., 424; 5 Bom. L. R., 431.

⁴ *Ajudhia Prasad v. Badar-ul-Husain* (1917), 39 All., 489; *Damodar v. Raghunath* (1902), 26 Bom., 551.

⁵ *Donald v. Crown* (1922), 4 Lahore, 1.

⁶ See *post*, p. 371.

⁷ *Gobind Mohun Das v. Kunja Behari Das* (1909), 14 C. W. N., 153; *British India Steam Navigation*

Company v. Secretary of State for India (1910), 38 Cal., 230; 15 C. W. N., 87. See *Chandi Ray v. Kripal Ray* (1911), 15 C. W. N., 682; *Hemanta Kumar Roy v. Baranagore Jute Company* (1914), 19 C. W. N., 442; and *Nilmoni Singh Deo Bahadoor (Rajah) v. Taranath Mookerjee* (1882), 9 I. A., 174; 9 Cal., 295; 12 C. L. R., 361 (a case under sec. 15 of the Indian High Courts Act, 1861); *Sivaprasad Ram v. Tricomdas Coverji Bhoja* (1915), 42 Cal., 926.

⁸ *Nauratan Lal v. Stephenson* (1918), 4 Pat. L. J., 195; *Lachmibati Kumari v. Nand Kumar Singh* (1920), 5 Pat. L. J., 400; *Bankay Behari v. Ram Bahadur*, [1918 Pat.], 223.

⁹ *Somasundaram Chettiar v. Manicka Vasaka Desika* (1907), 31 Mad., 60.

High Courts Act, 1861, as being without jurisdiction.¹ The Madras High Court in an earlier case declined to revise an interlocutory order.²

The High Courts of Bombay and Allahabad have declined to interfere with interlocutory orders³ where another remedy was available.

The Bombay High Court set aside an *ad interim* injunction to restrain an adoption.⁴

It has been held in Allahabad that the Court cannot revise an order permitting a plaintiff to sue *in forma pauperis*, but that it can revise an order refusing such permission.⁵

An order on an application for the stay of a suit cannot be revised.⁶

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."⁷

Acting under either the Civil Procedure Code or under the Government of India Act, the High Courts can set aside decrees or orders of subordinate Courts made without jurisdiction.

As to the meaning of "jurisdiction," MAHMOOD, J., said, in *Har Prasad v. Jafar Ali* (1885), 7 All., 345, at p. 350 :

"The word in its ordinary meaning simply means the legal power or authority of hearing and determining disputes for the purpose of administering justice, and in its broad legal sense it may be taken to mean the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by that law upon the judicial authority. Such limitations may either be territorial or pecuniary with reference to the value of the subject-matter in litigation, or they may relate to the nature of the litigation, or the domicile and nationality of the parties, or the class or rank to which the tribunal belongs.

"I am of opinion that the expression, as used by their Lordships⁸ must be understood in its broad sense and not too narrowly, and this interpretation is supported by the fact that in the last paragraph of their

¹ *Judooputtee Chatterjee v. Chunder Kant Bhattacharjee* (1868), 9 W. R. C. R., 809.

² *In re Nizam of Hyderabad* (1886), 9 Mad., 256.

³ *Muhammad Ayab v. Muhammad Mahmud* (1910), 32 All., 623; *Chattar Singh v. Lekhraj Singh* (1888), 5 All., 293; *Harsaran Singh v. Muhammad Raza* (1881), 4 All., 91; *Farid Ahmad v. Dulari Bibi* (1884), 6 All., 233; *Motilal Kashidai v. Nana* (1892), 13 Bom., 35; *Damodar v. Raghunath* (1902), 26 Bom., 551; *Nand Ram v. Bhopal Singh* (1912), 34 All., 592.

⁴ *Atrani (Bai) v. Deepsing Baria Thakor* (1915), 40 Bom., 86; 17 Bom. L. R., 1097.

⁵ *Muhammad Ayab v. Muhammad Mahmud* (1910), 32 All., 623.

⁶ *Sultanat Jahan Begam v. Sundar Lal* (1920), 42 All., 409.

⁷ *Balakrishna Udayar v. Vasudeva Aiyar* (1917), 44 I. A., 261, at p. 267; 40 Mad., 793, at p. 799; 22 C. W. N., 50, at p. 58; 19 Bom. L. R., 715, at p. 720.

⁸ *In Amir Hassan Khan (Rajah) v. Sheo Baksh Singh* (1884), 11 I. A., 237; 11 Calo., 6.

judgment their Lordships say that 'the Judicial Commissioner has no jurisdiction in the case' under section 622¹ of the Civil Procedure Code. Considering that the Judicial Commissioner exercises in Oudh (to use their Lordships' own words) 'the same powers as the High Court,' the *dictum* cannot be understood to mean that he had no 'jurisdiction' in the narrow sense of the word, to entertain an application for revision under section 622 in the case. I understand the passage simply to mean that he had exceeded his powers, and that his order was therefore *ultra vires*."

In *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1918), 41 Cal., 828, at p. 889, WOODROFFE, J., said: "According to one view, the term 'jurisdiction' is here used in the ordinary sense, that is, a jurisdiction local, pecuniary, personal, or with reference to the subject-matter of the suit. According to another view, the term may mean the legal authority of a Court to do certain things, namely, to make a particular order in a case over which it has jurisdiction in the sense stated. According to my own view the former construction is the preferable one."

According to BANERJI, J., in *Alston v. Pitambar Das* (1908), 25 All., 509, at p. 528, the expression "jurisdiction" refers to the *forum* for the institution of the suit. This view is too limited.

The following are instances of orders and decrees being set aside under the revision section of the Civil Procedure Code and under section 15 of the Indian High Courts Act, 1861, as being made without jurisdiction:²

- (a) An unauthorised order for the issue of a commission.³
- (b) Where the Lower Court had no jurisdiction to entertain an appeal.⁴
- (c) Staying execution at the instance of a third party.⁵
- (d) After foreclosure under Regulation VII of 1806, ordering that the money be paid to the mortgagee.⁶
- (e) Directing an inventory to be taken under section 4 of Act XIX of 1841, without conforming to the requirements of section 8 of that Act.⁷
- (f) Order by a Mamlatdar ousting a person not a party to suit.⁸
- (g) Appointing a Receiver otherwise than in a pending suit.⁹

¹ This section of Act XIV of 1882 corresponds with Act V of 1908, s. 115.

² Some of the older decisions on this question would probably not now be adopted.

³ *Somasundaram Chettiar v. Manicka Vasaka Desika* (1907), 81 Mad., 60.

⁴ *Bhagabati Bewa v. Nanda Kumar Chuckerbutty* (1908), 12 C. W. N., 885; *Baikanta Nath Goswami v. Sitamath Goswami* (1911), 38 Cal., 421; *Amra Nashya v. Gagan Shutar* (1869), 2 B. L. R. App., 85; s.c. *Omra Nushyo v. Gugun Sootur* (1869), 11 W. R. C. R., 180; *Habib Sobhan (Mir) v. Mahendra Nath Roy* (1869), 2 B. L. R. App., 82; 11 W. R. C. R.,

129; *Haris Chandra Gupta v. Shashimala Gupta* (1871), 6 B. L. R., 721; *Bai Mani v. Ranchodlal Amritlal* (1922), 25 Bom. L. R., 147.

⁵ *Brojendra Kumar Rai Chowdhari v. Rup Lal Dass* (1886), 12 Cal., 515.

⁶ *Hazari Lal v. Kheru Rai* (1881), 3 All., 576.

⁷ *Abdul Rahiman v. Kutli Ahmed* (1886), 10 Mad., 68; *Papamma v. Collector of Godavari* (1889), 12 Mad., 841.

⁸ *Chinaya v. Gangava* (1869), 21 Bom., 775.

⁹ *Puran Mal v. Janki Pershad Singh* (1901), 28 Cal., 680; 6 C. W. N., 114.

Orders and decrees without jurisdiction.

(h) Where a Judge set aside, without power to do so, an order which he had previously made.¹

(i) Where a Judge acted in contravention of the powers vested in him by the proviso to section 158 of the Bengal Tenancy Act (Act VIII of 1885).²

(j) A decree made on an award was set aside on the following grounds :

- (1) There was no written reference to arbitration as required by law.
- (2) The reference was made by a great number of persons who were not parties to the suit.
- (3) The matters in difference submitted to arbitration were matters not in suit at all.
- (4) The result of these proceedings was to expand the claim into one which could only have been made with the previous sanction of the Advocate-General.
- (5) The application for filing the award was time-barred.
- (6) The suit had abated.³

(k) An assignment of an administration bond by a Judge, while a previous assignment was in force.⁴

(l) Where a Collector, acting under section 28 of the Mamlatdars Act (Bombay Act II of 1906), interfered with the findings of fact of the Mamlatdar.⁵

(m) An order by a District Judge ordering a refund of money paid by a Collector under the Land Acquisition Act, 1894,⁶ without any apparent irregularity.⁷

(n) An order attaching property in spite of the provisions of the Provident Funds Act, 1897.⁸

(o) A decree made on appeal in a Small Cause Court suit tried by a Munsif on the original side.⁹

(p) An order as to the marriage of a minor.¹⁰

Failure to
exercise
jurisdiction.

In the following cases the High Courts have held that the lower Courts have failed to exercise the jurisdiction vested in them :

(a) Declining to amend a clerical error in a grant of probate,¹¹ or an accidental slip or omission in a decree.¹²

¹ In the matter of *Dhiraj Mahtab Chand Bahadur (Maharaja)* (1869), 2 B. L. R., 217; 11 W. R. C. R., 54.

² *Horananda Banerjee v. Ananta Dasi* (1904), 9 C. W. N., 492.

³ *Merali Visram v. Sheriff Dewji* (1911), 36 Bom., 105; 18 Bom. L. R., 1017.

⁴ *Kalimuddin v. Meharui* (1912), 39 Calc., 568.

⁵ *Kashiram Mansing v. Rajaram* (1911), 85 Bom., 487; 18 Bom. L. R., 879.

⁶ Act I of 1894, s. 31.

⁷ *Gobindaranee Dasee v. Brinda Ramee Dasee* (1908), 85 Calc., 1104;

12 C. W. N., 1039.

⁸ Acts IX of 1897, s. 4; IV of 1903, s. 2; *Hindley v. Joyramain Marwari* (1919), 46 Calc., 962; 24 C. W. N., 288.

⁹ *Kolipara Seetapathy v. Kankipati Subbayya* (1909), 83 Mad., 323; *Abdul Majid v. Bedyadhar Saran Das* (1916), 39 All., 101.

¹⁰ *Laxminarayan v. Parvatibai* (1919), 22 Bom. L. R., 399.

¹¹ *Gerindra Kumar Das Gupta v. Rajeswari Roy* (1899), 27 Calc., 5.

¹² *Sahadeo Gir v. Deo Dutt Misir* (1915), 37 All., 323.

(b) Omission to investigate a claim on the erroneous ground that the claimant was bound by the decree.¹

(c) Refusing to admit a plaint on the erroneous ground that the Court had no jurisdiction.²

(d) Erroneously refusing to issue execution.³

(e) Refusing to confirm a sale under section 812 of the Civil Procedure Code, 1882 (now Order 21, rule 92, of Act V of 1908), although no application had been made in accordance with law to set it aside.⁴

(f) Declining to order restitution of amount levied in excess of what was due under a decree.⁵

(g) Erroneously refusing to entertain a suit in which the Court had jurisdiction.⁶

(h) Erroneously declining to make rateable distribution of property among creditors.⁷

(i) Deciding a case without the Judge applying his mind to a question of law.⁸

(j) Erroneously dismissing an application on the ground that it was made by a person not entitled to apply.⁹

(k) Refusing to correct an accidental mistake in drawing a decree.¹⁰

There is a difference of opinion as to when the High Court will require the lower Court to amend a decree so as to make it in accordance with the judgment.¹¹ Amendment of decree.

An erroneous order as to the Court fee payable in effect amounts to a Court fee. denial of jurisdiction.¹²

Where the question is one of fact, and has been determined upon evidence, the High Court would rarely interfere.¹³ Question of fact.

Can a Judge by an erroneous, but not perverse, construction of the law. Erroneous construction of law.

¹ *Jameela (Mussamut) v. Luchmun Panday* (1879), 4 C. L. R., 74.

² *Zamiran v. Fateh Ali* (1904), 32 Cal., 146; *Badami Kuar v. Dinu Rai* (1886), 8 All., 111; *Khenum-kuree Dabee v. Shurut Soonduree Dabee* (1870), 14 W. R. O. R., 9; *Munohur Paul v. Wise* (1871), 15 W. R. O. R., 246.

³ *Shamrav Pandoji v. Niloji Ramaji* (1885), 10 Bom., 200.

⁴ *Birj Mohun Thakoor v. Uma Nath Chowdhry (Rai)* (1892), 19 I. A., 154; 20 Cal., 8.

⁵ *Gobind Coomar Chowdhry v. Kisto Coomar Chowdhry* (1867), 7 W. R. C. R., 520.

⁶ *Haradajal Mundal v. Tirthanund Thakur* (1870), 4 B. L. R. App., 28; 13 W. R. C. R., 34.

⁷ *Viraraghava v. Parasurama* (1891), 15 Mad., 372; *Maharajah of*

Burdwan v. Apurba Krishna Roy (1911), 15 C. W. N., 872.

⁸ *Naurang Ram Sahu v. Bhakhori Mandar* (1919), 4 Pat. L. J., 277.

⁹ *Sundaram v. Mause Mavuthar* (1921), 44 Mad., 554.

¹⁰ *Sahadeo Gir v. Deo Dutt Misir* (1915), 37 All., 323; *Rajgiri Singh v. Jadunath Rai*, [1922 Pat.], 355.

¹¹ *Balmakund v. Sheo Jatan Lal* (1882), 6 All., 125; *Jivraji v. Pragji* (1886), 10 Mad., 51.

¹² *Ramrup Das v. Shiyaram Das (Mohunt)* (1910), 14 C. W. N., 932; *Upadhya Thakur v. Persidh Singh* (1896), 23 Cal., 723; *Willis v. Jawad Husain* (1907), 29 All., 468; *Vithal Krishna v. Balkrishna Janardani* (1886), 10 Bom., 610. See *Omrao Mirza v. Jones* (1882), 12 C. L. R., 148.

¹³ *Post*, p. 364.

law,¹ or finding of fact,² give to himself a jurisdiction which he does not possess or refuse to exercise a jurisdiction which he possesses?

The most recent decision on this question is that of *Chandu Lal v. Koka Mal* (1920), 48 All., 884; the effect of which was that the Judge had power to determine the question whether he had jurisdiction, as a question of law or of fact, in the same way as he had to determine other questions in the case.

It is for the High Court to act under section 115, and to determine whether the conditions of the case are within the words of that section;³ and there is authority that where a question of jurisdiction is involved, a High Court is competent to revise a conclusion of law or fact which bears on such question.⁴

Decision as to limitation.

Where the Court holds that an application or suit is barred, or that it is not barred by limitation,⁵ the High Court cannot interfere on revision.

Error of Appellate Court.

Where the Court below has erroneously held that a lower Court has no jurisdiction, or that it has jurisdiction, there is authority that the High Court cannot interfere with the decision of the lower Appellate Court,⁶ but it can, it is submitted, require the Court of first instance to exercise its jurisdiction or to refrain from cognizance of the case, as the case may be.⁷

The High Court will interfere where the Court has exercised, or has refused to exercise, its jurisdiction ignorantly or perversely, or has made only a colourable pretence at exercising a jurisdiction vested in it by law, and has thereby caused injury which would be irreparable if not set right.⁸

"Illegally or with material irregularity."

The question as to what the expression "to have acted illegally or with material irregularity" means is not easy of solution. This much only is clear, viz. that the High Court cannot interfere either under

¹ *Manisha Eradi v. Siyali Koya* (1887), 11 Mad., 220; *Shamrav Pandoji v. Niloji Ramaji* (1885), 10 Bom., 200; *Salamva v. Mariyava* (1892), 16 Bom., 711, note; *Collector of Visagapatam v. Abdul Kharim Sahib* (1897), 21 Mad., 113.

² The finding of fact must be after the parties have had opportunity of calling evidence: *Bindessuri Pershad Singh v. Jankee Pershad Singh* (1889), 16 Cal., 482.

³ See *Dhanwanti Kuer (Musst) v. Sheo Shankar Lal*, [1921 Pat.], 865.

⁴ *Bihari Lal v. Baldeo Narain* (1918), 40 All., 674, explaining *Balakrishna Udayar v. Vasudeva Aiyar* (1917), 44 I. A., 261; 40 Mad., 798; 22 C. W. N., 50; 19 Bom. L. R., 715.

⁵ *Ramgopal Jhoonjhoonwalla v. Joharmal Khemka* (1912), 89 Cal., 473; *Kaies Persaud Chowdry v. Ram Soondur Sircar* (1869), 12 W. R. C. R., 129; *Jivraji v. Pragji* (1886), 10

Mad., 51; *Sundar Singh v. Doru Shankar* (1897), 20 All., 78; *Jhotu Lal Ghose v. Ganouri Sahu* (1918), 3 Pat. L. J., 876. *Contrd*: *Har Prasad v. Jafar Ali* (1885), 7 All., 345; *Venkubai v. Lakshman Venkoba Khot* (1887), 12 Bom., 617. In one case (*Kailash Chandra Holdar v. Bissanath Paramanic*, 1 C. W. N., 67), where the lower Court had omitted to consider the question of limitation the High Court set aside its decision on revision.

⁶ See *Mathura Nath Sarkar v. Umesh Chandra Sarkar* (1897), 1 C. W. N., 626.

⁷ See *Ratanshankar Revashankar v. Gulabshankar Lalshankar* (1867), 4 Bom. H. C. A. C., 178.

⁸ *Ganga Prasad v. Nandu Ram* (1916), 20 C. W. N., 1080; 1 Pat. L. J., 465. See *Seth Jahar Mal v. Pritchard* (1919), 4 Pat. L. J., 881.

section 115 of the Civil Procedure Code (Act V of 1908)¹ or under section 107 of the Government of India Act, 1915,² merely because the Judge has pronounced an erroneous decision either of law or of fact on a matter which he had jurisdiction to decide,³ even if such decision involved a determination as to the regularity of certain procedure.⁴

For instance, where the Judge was in error on a question of limitation,⁵ or on a question of *res judicata*.⁶

The High Courts have interfered where the Court below erroneously held there was no cause of action,⁷ and where it held erroneously that there was a cause of action,⁸ but it is submitted that if the Court had jurisdiction to determine whether there was a cause of action, an erroneous decision on that question does not give a right of revision.⁹

It does not follow that no error of law is capable of revision.¹⁰ This is evident from the word "illegally" in section 115 of the Civil Procedure Code, 1908.

¹ *Amir Hassan Khan (Rajah) v. Sheo Baksh Singh* (1884), 11 I. A., 287; 11 Cal., 6; *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1918), 41 Cal., 823; *Kalicharan Sirdar v. Sarat Chunder Chowdhry* (1908), 30 Cal., 397; 17 C. W. N., 545; *Gopi Koeri v. Gopi Lal* (1894), 21 Cal., 799; *Krishna Mohini Dossee v. Kedarnath Chuckerbutty* (1888), 15 Cal., 446; *Muhammad Suleman Khan v. Fatima* (1886), 9 All., 104; *Badami Kuar v. Dinu Rai* (1886), 8 All., 111; *Narayanamsami v. Natesa* (1892), 16 Mad., 424; *Parasurama Ayyar v. Seshier* (1908), 27 Mad., 504; *Vanangamudi v. Ramasami* (1891), 14 Mad., 406; *Rabbaba Khanum v. Noorjehan Begum* (1886), 18 Cal., 90; *Amritrav Krishna Deshpande v. Balkrishna Ganesh Amrapurkar* (1887), 11 Bom., 488; *Hari Bhikaji v. Naro Vishvanath* (1885), 9 Bom., 432; *In the matter of Lukhy Kant Bose* (1875), 1 Cal., 180; 24 W. R. O. R., 440.

² 5, 6 Geo. V. c. 61; *ante*, p. 27. *In the matter of Madho Ram* (1899), 21 All., 181; *Tej Ram v. Harsukh* (1875), 1 All., 101; *Madhub Chunder Giree v. Sham Chund Giree* (1877), 8 Cal., 243; *Khawas Ram Bux Singh v. Bishendharee Geer* (1875), 28 W. R. O. R., 402; *In the matter of Bagram* (1873), 20 W. R. O. R., 10; *Kalee Hur Doss v. Roodressur Chuckerbutty* (1871), 15 W. R. O. R., 90; *In the matter of Durga*

Charan Sirkar (1869), 2 B. L. R., 165; 11 W. R. O. R., 28. *In Roghounundun Lall v. Mohesh Lall* (1878), 9 C. L. R., 187, the High Court set aside the order of the Court below on the ground that that Court had been misled by a false statement.

³ *Charusila Dasi v. Haran Chandra Mukerjee*, [1919 Pat.], 232; *Ritu Kuer (Babui) v. Alakhdeo Narain Singh* (1918), 4 Pat. L. J., 830; *Dhanwanti Kuer (Musammal) v. Sheo Shankar Lall* (1919), 4 Pat. L. J., 840.

⁴ *Patto Kumari v. Upendra Nath Ghosh* (1919), 4 Pat. L. J., 265.

⁵ *Ram Gopal Jhoonjhoonwalla v. Joharmall Khemka* (1912), 39 Cal., 473; *Sundar Singh v. Doru Shankar* (1897), 20 All., 78; *Sarman Lal v. Khuban* (1894), 17 All., 422.

⁶ *Amritrav Krishna Deshpande v. Balkrishna Ganesh Amrapurkar* (1887), 11 Bom., 488; *Hari Bhikaji v. Naro Vishvanath* (1885), 9 Bom., 432.

⁷ See *Rama v. Kunji* (1886), 9 Mad., 375. The question of the applicability of the revision sections was not fully considered.

⁸ *Alston v. Pitambar Das* (1908), 25 All., 509.

⁹ *Ante*, pp. 363, 364.

¹⁰ *Per BANERJI, J.*, in *Raghunath Gujrati v. Chatraput Singh (Rai)* (1897), 1 C. W. N., 633, and in *Enat Mondul v. Baloram Dey* (1899), 3 C. W. N., 581.

In *Shew Prosad Bungshidhur v. Ram Chunder Haribux* (1918), 41 Calc., 828, at p. 838, JENKINS, C.J., said, "It appears to me that section 115 can only be called in aid when the failure of justice (if any) has been due to one or other of the faults of procedure indicated in that section."¹

It is not clear as to what is the meaning of the word "illegal." Trying the case in a way forbidden by law, as, for instance, joining several causes of action by several plaintiffs, is more than an irregularity.²

In the following cases it has been held that the Court acted in the exercise of its jurisdiction illegally:

Instances of
acting "illegally."

(a) Where the Court laid down a rule that "sanction to prosecute cannot, under any circumstances, be given to a third party."³

(b) Where the Court made an order without any legal evidence to justify it.⁴ An erroneous admission, or rejection, of evidence does not justify interference.⁵

(c) Where a Judge made an order under Bombay Regulation VIII. of 1827, s. 9, before it had been determined which of the claimants was heir of the deceased.⁶

(d) Where the Judge dismissed an appeal for default of prosecution, although the party and his pleader were present.⁷

(e) Where the Court based a decree on a document which was not registered, but which ought to have been registered.⁸

(f) Where the Court below held that the bond sued on was not proved, although it had been admitted in the pleadings.⁹

(g) Where an Appellate Court rejected as unstamped a document which had been admitted in the Court below.¹⁰

(h) Where the Judge made an order against a person without allowing him to be heard, and to adduce evidence in his defence.¹¹

(i) Where the Judge based a decree upon an unstamped hundi.¹²

(j) When there has been an abuse of judicial process.¹³

¹ See also *Chandra Kishore Roy Chowdhury (Kumar) v. Basarat Ali Chowdhury* (1917), 22 C. W. N., 627; *Krishna Mohini Dossee v. Kedarnath Chuckerbutty* (1888), 15 Calc., 446, at p. 449; *Amir Hassan Khan (Rajah) v. Sheo Baksh Singh* (1884), 11 I. A., 237; 11 Calc., 6; *Mathura Nath Sarkar v. Umesh Chandra Sarkar* (1897), 1 C. W. N., 626.

² Cf. *Smurthwaite v. Hannay* (1894), A. C., 494.

³ *In re Ramprasad Malla* (1909), 37 Calc., 18; 18 C. W. N., 1088.

⁴ *In re Siddheswar Boral* (1899), 4 C. W. N., 86; *Bissessur Das v. Smidt* (1905), 10 C. W. N., 14; *Shields v. Wilkinson* (1887), 9 All., 398; *Chattarbhuj v. Raghubar Dayal* (1914), 36 All., 354.

⁵ *Madhavray v. Gulabbhai* (1898), 28 Bom., 177. See *Enat Mondul v.*

Baloram Dey (1899), 3 C. W. N., 581.

⁶ *Vishvambhar Pandit (Shri) v. Vasudev Pandit (Shri)* (1892), 16 Bom., 708.

⁷ *Jawahir Singh v. Debi Singh* (1895), 18 All., 119.

⁸ *Gurunath Shrinivas Desai v. Chenbasappa* (1893), 18 Bom., 745.

⁹ *Gorakh Babaji v. Vithal Narayan Joshi* (1887), 11 Bom., 485.

¹⁰ *Shiddappa v. Irava* (1898), 18 Bom., 737. See *Enat Mondul v. Baloram Dey* (1899), 3 C. W. N., 581.

¹¹ *Sato Koer v. Gopal Sahu* (1907), 34 Calc., 929; 12 C. W. N., 65. This is also a material irregularity: *ibid.*

¹² *Chenbasappa v. Lakshman Ramchandra* (1893), 18 Bom., 369.

¹³ *Velchand Chhaganlal v. Liston* (1914), 38 Bom., 638; 16 Bom. L. R., 517.

(k) Where the lower Appellate Court declined to order the refund of fees paid on a memorandum of appeal, which he should have ordered under section 13 of the Court Fees Act, 1870 (VII-of 1870).¹

(l) Entertaining a claim to property after it had been sold in execution of a decree, or otherwise acting in defiance of statutory provisions.²

(m) Refusing to allow the withdrawal of execution proceedings.³

The expression "irregularity" in section 115 of the Civil Procedure Code, 1908, apparently refers to procedure.⁴ "Material irregularity."

The adoption of a procedure different from that provided by law, and such as to cause material injury to the suitor, would, it is submitted, amount to a material irregularity.⁵

A majority of a Full Bench at Madras has held that where a Court, having applied its mind to a question of law or procedure, arrives at an erroneous, but not perverse, decision, the High Court cannot interfere.⁶

It is immaterial whether the erroneous view of the law was during the hearing or in the final decision.⁷

In the following cases the High Courts have held that there was "material irregularity."⁸

(a) Where a Court of Appeal decided a case on a point which had not arisen in the Court below, and with regard to which the parties had no opportunity of calling evidence.⁹

(b) Where a Court set aside a sale without proof of substantial injury to the applicant.¹⁰

(c) Where a Judge altered a decree of his predecessor by inserting "dismiss" for "decree."¹¹

(d) Where a Judge referred a case to the arbitration of arbitrators who had not consented to act.¹²

¹ *Bhausing v. Chaganiram Hurchand* (1918), 42 Bom., 868; 20 Bom. L. R., 348.

² *Gopal Chandra Mukerjee v. Notobar Kundu* (1912), 16 C. W. N., 1029.

³ *Chowdhury Ram Prasad Rai v. Mahesh Kant Chowdhury* (1921), 1 Pat., 232.

⁴ *Bhashyam v. Jayaram* (1887), 11 Mad., 308, at p. 304.

⁵ *Sew Bux Bogla v. Shib Chunder Sen* (1886), 13 Calc., 225; *Deo Das v. Ram Charn Dass Chella (Mohunt)* (1898), 2 C. W. N., 474. See also judgments of minority of Judges (BEST and DAVIES, JJ.), in *Kristamma Naidu v. Chapa Naidu* (1894), 17 Mad., 410. The judgment of MACLEAN, C.J., in *Raghunath Gujrati v. Chatrapat Singh (Rai)* (1897), 1 C. W. N., 683, is at variance with *Sew Bux Bogla's* case, as he held that the Judge could determine the mode of division.

⁶ *Kristamma Naidu v. Chapa Naidu* (1894), 17 Mad., 410, differed from by BANERJEE, J., in *Raghunath Gujrati v. Chatrapat Singh (Rai)* (1897), 1 C. W. N., 683. See *Janki Kuer (Maharani) v. Kukur Dusatdh*, [1918 Pat.], 347; *Rabbaba Khanum v. Noorjehan Begum* (1886), 13 Calc., 90. ⁷ *Madhavav v. Gulabhbhai* (1898), 23 Bom., 177, at p. 179.

⁸ In some of those cases the Courts below might have been considered to have acted illegally and in some cases without jurisdiction.

⁹ See *Ralli v. Parmanand Jewraj* (1889), 13 Bom., 642.

¹⁰ *Lakshmana v. Najimudin* (1885), 9 Mad., 145. See Civil Procedure Code, Act V of 1908, O. 21, r. 90.

¹¹ *Surta v. Ganga* (1885), 7 All., 411; s.c. *ibid.*, 875. See *Raghunath Das v. Raj Kumar* (1885), *ibid.*, 876.

¹² *Pugardin v. Moidin* (1882), 6 Mad., 414.

(e) Where a Judge admitted an application to set aside a decree after the period of limitation had expired.¹

(f) Giving a decree on an award for costs where the arbitrators had no power to award costs.²

(g) Refusing to amend a decree which was at variance with the judgment.³

(h) Dismissing a suit on the ground that persons who were not necessary parties should have been parties.⁴

(i) Making a decree *ex parte* when the summons was not served in accordance with law.⁵

(j) Setting aside on appeal an order for review upon grounds not included in section 629 of Act XIV of 1882 (corresponding with Order 47, rule 7, of Act V of 1908 (Civil Procedure Code)).⁶

(k) Where a Judge and assessors, acting under the Land Acquisition Act,⁷ refuse to take into consideration the matters which they are required to, or decline to take into consideration matters prescribed by the Act.⁸

(l) Refusing to add as a party a person who ought to have been a party to the proceedings.⁹

(m) Passing a decree in terms of an award without giving notice.¹⁰

(n) Where the Court made a personal decree against minor representatives of a debtor.¹¹

(o) Where the Court gave permission to withdraw a suit with leave to bring a fresh suit without giving reasons,¹² and where the Court gave such leave after decree.¹³

(p) Where the Court decided an issue which did not arise.¹⁴

(q) Where the Court omitted to order the plaintiffs to pay the stamp fee, when a pauper suit had been dismissed.¹⁵

(r) Where the Court dealt with the merits of the case on an application to sue as a pauper.¹⁶

¹ *Harprasad v. Jafar Ali* (1885), 7 All., 345. It is questionable whether this decision was correct, see *ante*, p. 364.

² *Dagdusa Tilakchand v. Bhukan Govind Shet* (1884), 9 Bom., 82.

³ *Balmakund v. Sheo Jatan Lal* (1882), 6 All., 125.

⁴ *Gobind Prasad v. Chandar Sekhar* (1887), 9 All., 486.

⁵ *Jagannath Brakhhbhai v. Sassoon* (1898), 18 Bom., 606; *Abraham Pillai v. Smith* (1906), 29 Mad., 824.

⁶ *Abdul Sadiq v. Abdul Asis* (1898), 21 All., 152.

⁷ See Act I of 1894, ss. 23, 24.

⁸ *Joseph v. The Salt Company* (1892), 17 Mad., 371.

⁹ *Khettramoni Dasi v. Shyama Churn Kundu* (1894), 21 Cal., 589.

¹⁰ *Rangasami v. Muttusami* (1887),

11 Mad., 144; *Chatarbuj Das v. Ganesh Ram* (1898), 20 All., 474. See Act V of 1908, Sch. II, para. 10.

¹¹ *Bhashyam v. Jayaram* (1887), 11 Mad., 303.

¹² *Tirupati v. Muttu* (1888), 11 Mad., 822.

¹³ *Elknath v. Ranoji* (1911), 35 Bom., 261.

¹⁴ *Venkubai v. Lakshman Venkoba Khot* (1887), 12 Bom., 617; *Varajlal v. Shomeshwar* (1904), 29 Bom., 219; 7 Bom. L. R., 90.

¹⁵ *Collector of Kanara v. Rambhat* (1893), 18 Bom., 454. See Civil Procedure Code (Act V of 1908), O. 38, r. 11.

¹⁶ *Debo Das v. Ram Charn Dass Chella (Mohunt)* (1898), 2 C. W. N., 474.

(e) Omitting to raise and try a material issue.¹ The omission to decide a point of law which is not raised does not amount to an irregularity.²

(f) Amending the valuation of the suit.³

(u) Where the Court after the close of the trial gave the plaintiff an opportunity to produce more documents.⁴

(v) Refusing to draw up a preliminary decree.⁵

(w) Refusing to order refund of Court fees under section 18 of the Court Fees Act (VII of 1870).⁶

(x) Omitting to decide a question of limitation which appeared on the face of the application.⁷

(y) Admitting a review having regard to facts arising subsequent to the decree.⁸

(z) Where a Judge decided a question of *res judicata* on an application under section 10 of the Civil Procedure Code (Act V of 1908).⁹

(aa) Erroneously determining that the liability of a surety in respect of attached property did not survive to his representatives.¹⁰

(bb) Where a Judge rejected a document merely because it was not produced with the plaint, and dismissed the suit.¹¹

(cc) Omitting to exercise a judicial discretion in an application for leave to withdraw a suit, and bring a fresh suit in respect of the same subject-matter.¹²

(dd) Where the Court erroneously applied the provisions of the Succession (Property Protection) Act, 1841,¹³ to a case governed by the Mitakshara School of Hindu law.¹⁴

(ee) Refusing to summon witnesses.¹⁵

(ff) An order requiring pauper appellants to give security for costs.¹⁶

(gg) Where the Court omitted to carry out the order of a superior Court.¹⁷

¹ *Ramjas Agarwalla v. India General Navigation and Railway Company* (1911), 16 C. W. N., 424.

² *Haridas Chakubai v. Ratansey Raghavji* (1921), 46 Bom., 56; 23 Bom. L. R., 802.

³ *Ashiq Ali v. Imtiaz Begam* (1917), 39 All., 723; see *Port Canning and Land Improvement Company v. Roson Ali Mollah* (1912), 17 C. W. N., 160.

⁴ *Kashibai (Bai) v. Shidapa Annappa* (1913), 37 Bom., 682; 15 Bom. L. R., 828.

⁵ *Sidhanath Dhonddev v. Ganesh Govind* (1912), 37 Bom., 60; 14 Bom. L. R., 916.

⁶ *Bhausing v. Chaganiram Hurchand* (1918), 42 Bom., 863; 20 Bom. L. R., 848.

⁷ *Tara Sankar Ghosh v. Basiruddi* (1915), 19 C. W. N., 970.

⁸ *Kotagiri Venkata Subbamma Rao (Rajah) v. Vellanki Venkatrama Rao (Rajah)* (1900), 27 I. A., 197; 24

Mad., 1; 4 C. W. N., 725; 2 Bom. L. R., 771; *Golam Ali Jamadar v. Abdul Karim Sirkar* (1909), 14 C. W. N., 244.

⁹ *Sivaprasad Ram v. Tricomdas Coverji Bhoja* (1915), 42 Calo., 926.

¹⁰ *Chandulal v. Jeshangbhai* (1916), 41 Bom., 402; 19 Bom. L. R., 112.

¹¹ *Mewa Lal Sahu v. Kumerji Jha* (1909), 18 C. W. N., 797.

¹² *Kannuswami Pillai v. Jagathambal* (1918), 41 Mad., 701. See *Rajendra Lal Sur v. Atal Bihari Sur* (1916), 44 Calo., 454.

¹³ XIX of 1841.

¹⁴ *Satokoer v. Gopal Sahu* (1907), 34 Calo., 929; 12 C. W. N., 65.

¹⁵ *Lal Nilmani Nath Sahi Deo v. Udai Nath Sahi Deo*, [1919 Pat.], 60.

¹⁶ *Nasim v. Abdul Hamid* (1921), 3 Lahore, 30.

¹⁷ *Abdullah v. Salaru* (1895), 18 All., 4.

(hh) Where the Court attached properties of which the defendant was a trustee, although the decree was made against the defendant personally.¹

Erroneous
orders causing
injury.

In one case where the order was not only erroneous, but must have led to the greatest confusion and injury to the interests of the parties, the High Court interfered.²

In another case the Court set aside a decision where the plaintiff failed to secure the production of an important document from the records of another Court, though he took all reasonable steps for that purpose, and the suit was disposed of without reference to that document.³

In another case where the lower Appellate Court had held that the circumstance that the sale was held within 30 days from the time of the affixing of the proclamation⁴ was not fatal to the sale, a full Bench in the Bengal High Court expressed the opinion that under proper circumstances the High Court could set aside the sale notwithstanding the order of the Appellate Court.⁵

In re Nabin Chandra Das Gupta (1908), 35 Calc., 317; 12 C. W. N., 381, the Court set aside a proceeding against a pleader on the ground that he had refused to accept a brief. The proceedings were treated as irregular.

In Israil v. Shamsheer Rahman (1913), 41 Calc., 436, the Calcutta High Court interfered under section 15 of the Charter Act (24, 25 Vict. c. 104, s. 15), on the ground that the defendants were acting in defiance of the authority of the Court. This is a doubtful case. The question was whether an injunction should issue, and the Court below duly considered such question.

Any error of law which amounts to an usurpation of authority in the act done by the Court comes within clause (c) if not within clause (a) of section 115 of the Code.⁶

Discretion of
Court below.

Although the High Court will not interfere in matters which are in the judicial discretion of the Court below,⁷ if the Judge, in a case where

¹ *In the matter of Sharda* (1901), 28 Calc., 574.

² *Pogose v. Catchick* (1878), 3 Calc., 708; 2 O. L. R., 278. See *Sardhari Sah v. Hukum Chand Sah* (1914), 41 Calc., 876; 18 C. W. N., 662.

³ *Gobind Ramanuja Das (Mohant) v. Lakshun Parida* (1906), 11 C. W. N., 112.

⁴ Act X of 1877 (Civil Procedure), s. 290; Act V of 1908 (Civil Procedure), O. 21, r. 68.

⁵ *In the matter of Bhekraj Koeri* (1880), 5 Calc., 878.

⁶ *Hindley v. Joymarain Marwari* (1919), 46 Calc., 962, at p. 970; 24 C. W. N., 288, at p. 291. In this

case the Court attached certain funds in spite of the provisions of the Provident Fund Act, 1897 (IX of 1897).

⁷ *Vasudeva v. Chinnasami* (1884), 7 Mad., 584; *Babur Ali (Shaikh) v. Gokul Lall* (1875), 24 W. R. C. R., 62; *Krishna Velji Marwadi v. Bhau Mansaram* (1893), 18 Bom., 61; *In re Venkateswara* (1886), 10 Mad., 98. See *In the matter of Umasundari Devi (Rani)* (1870), 5 B. L. R. App., 29; *Jadoomoney Dossee* (1869), 11 W. R. C. R., 494; *Sookoomar Singh v. Kashee Singh* (1870), 18 W. R. C. R., 250; *Petition of Oodiat Zuman (Moonshee)*, 8 W. R. C. R., 109; *In the matter of Madho Prasad* (1881), 3 All., 508.

he has discretion, does not exercise such discretion but lays down a general rule of action, the Court will interfere.¹

Where the applicant has another and adequate remedy the High Court will not ordinarily interfere under its powers of revision.² Except where the remedy is by way of appeal, in which case it is barred by section 115 of the Civil Procedure Code from interfering,³ it has power to interfere even if another remedy be available.⁴

The Court is not obliged to interfere under its revisionary powers.⁵ Discretion as to interference.

The powers ought not to be exercised in such a way as to do indirectly that which the law forbids to be done directly, and thus to give an appeal when none lies⁶ or where time to appeal has expired.⁷

A mere technicality does not justify an application.⁸

If there be no failure or miscarriage of justice, or prejudice without other means of redress, the Court will not interfere even though the Court below may have acted without jurisdiction.⁹

¹ *Collett v. Armstrong* (1887), 14 Calc., 526.

² There was a remedy by review in *Chandrakishore Roy Choudhury (Kumar) v. Basarat Ali Chowdhury* (1917), 22 C. W. N., 627. In the following cases there was a remedy by suit: *Chandi Ray v. Kripal Ray* (1911), 15 C. W. N., 682; *Chidambaram v. Nagappa* (1912), 38 Mad., 15; *Irbasappa v. Basangowda* (1919), 44 Bom., 595; 22 Bom. L. R., 746; *Bhundal Panda v. Pandol Pos Patil* (1887), 12 Bom., 221; *Madhub Chunder Giree v. Sham Chand Giree* (1877), 3 Calc., 243; *Venkataraman v. Mahalingayyan* (1886), 9 Mad., 508; *Kashinath Sakharan v. Nana* (1896), 21 Bom., 731; *Guise v. Jaisraj* (1893), 15 All., 405; *Bhagwan Ramnuj Das (Mohunt) v. Khettermoni Dassi* (1896), 1 C. W. N., 617; *Swinhoe v. Hera Lal Sirkar* (1894), 2 C. W. N., 727; *Sundar Das v. Mansa Ram* (1894), 7 All., 407; *Mahashankar Harishankar v. Valibhai Umanji* (1869), 6 Bom. H. C., 174; *Hurmoozi Begum (Musammat) v. Aysha (Musammat)*, (1920), 5 Pat. L. J., 415; *In the matter of Miller* (1869), 4 B. L. R. A. C., 72; 12 W. R. C. R., 103; *Bishno Chunder Bhuttacharjee v. Shoshee Mohan Pal Chowdhry* (1874), 22 W. R. C. R., 277; *Hureehur Mookerjee v. Nobin Chunder Doss* (1873), 20 W. R. C. R., 202. See *Raghunandan Prasad v. Ram Chandra Manda* (1918), 4 Pat.

L. J., 94; [1919 Pat.], 81. *In the matter of Fakeer Chand Iall* (1878), 20 W. R. C. R., 470, and *In the matter of Akbar Ali* (1873), 19 W. R. C. R., 148, dismissed officials had a remedy by application to Government. As to interlocutory applications, the orders in which are appealable in an appeal from the decree, see *ante*, pp. 351, 352.

³ *Ante*, p. 355.

⁴ See *Golam Mahomed v. Saroda Mohan Maitra* (1900), 4 C. W. N., 695; *Shiva Nathaji v. Joma Kashinath* (1883), 7 Bom., 341; *Tiruchittambala Chetti v. Seshayyengar* (1881), 4 Mad., 383.

⁵ *Sreemutty Dossee v. Sreenibashi Dey* (1869), 12 W. R. C. R., 74; *Asrafanmissa Begum v. Inaet Hossein (Syad)* (1870), 5 B. L. R., 316; 13 W. R. C. R., 439.

⁶ *In the matter of Lukhy Kant Bose* (1875), 1 Calc., 180; 24 W. R. C. R., 440; *Karim Sheikh v. Mulchoda Soondery Dassee* (1875), 15 B. L. R., 111; 23 W. R. C. R., 268; *Narayani Dayi Debi v. Chandi Charan Chowdhry* (1869), 3 B. L. R. App., 65; 11 W. R. C. R., 512.

⁷ *Pogose v. Khajah Ashanoollah* (1877), 3 Calc., 710, note.

⁸ *Asharfi Lal v. Deputy Commissioner of Bara Banki* (1895), 22 I. A., 90; 22 Calc., 729.

⁹ *Swinhoe v. Hera Lal Sirkar* (1894), 2 C. W. N., 727; *Sukh Lal v. Tara Chand* (1905), 33 Calc., 68; 9 C. W. N.,

The Court will not interfere where its interference will work injustice or hardship.¹

Delay and
laches.

The Court will not interfere where there has been delay² or laches,³ or where the applicant has wilfully brought a suit in a Court having no jurisdiction,⁴ or has not objected to the jurisdiction of the Court below.⁵

Objections to
territorial
jurisdiction.

An appellate or revisional Court cannot entertain any objection as to the place of suing, unless such objection be taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.⁶

Objections
that suit or
appeal not
properly
valued.

A revisional Court cannot entertain an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower Appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto unless—

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in lower Appellate Court in the memorandum of appeal to that Court; or

(b) the Revisional Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit on its merits.⁷

At whose
instance Court
will interfere.

Although the Court would ordinarily refuse to interfere except at

1046; *Narayani Dayi Debi v. Chandi Charan Chowdhry* (1869), 8 B. L. R., 65; 11 W. R. C. R., 512. See *Bhoy-rub Chunder Doss v. Wajedunnissa Khatoon* (1880), 6 C. L. R., 284; *Nana Bayaji v. Pandurang Vasudev* (1884), 9 Bom., 97; *Kalee Mohun Sircar v. Humayoon* (1875), 24 W. R. C. R., 311; *Kristamma Naidu v. Chapa Naidu* (1899), 17 Mad., 410, at p. 421.

¹ *Narayambhai Lalbhai v. Gangakrishna Balkrishna* (1867), 4 Bom. H. C. A. O., 87; *Dayaram v. Govardhandas* (1904), 28 Bom., 458; 6 Bom. L. R., 462.

² *Radha Mohun Roy v. Raj Chunder Shah* (1874), 22 W. R. C. R., 522; *Bhuggobutty Kowar v. Money* (1878), 2 C. L. R., 545; *Zuhoorun Begum v. Mahomed Wajed (Syad)* (1872), 18 W. R. C. R., 87; *Unniraman v.*

Chathan (1886), 9 Mad., 451.

³ *Mathuradas Govardhandas v. Fatma Ulka Begam* (1868), 5 Bom. H. C. A. C., 63; *In the matter of Leslie* (1872), 10 B. L. R., 68; 18 W. R. C. R., 474; *In the matter of Cochrane* (1875), 14 B. L. R., 330; 23 W. R. C. R., 310.

⁴ *In the matter of Wise* (1878), 10 B. L. R. App., 20.

⁵ *Drobo Moyes Dabee v. Bipin Mundul*, (1868), 10 W. R. C. R., 6; *Haridas Chakrabai v. Ratansey Raghavji* (1921), 46 Bom., 56; 23 Bom. L. R., 802.

⁶ Act V of 1908, s. 21.

⁷ Act VII of 1887, s. 11. See *Hamidunnissa Bibi v. Gopal Chandra Malakar* (1897), 24 Calc., 661; 1 C. W. N., 556.

the instance of an aggrieved party,¹ whether he be a party to the proceedings or not,² in one case a High Court interfered at the instance of the District Judge.³

¹ *Mahomed Foyez Chowdhry v. Goluck Dass* (1880), 7 C. L. R., 191.

² *Golam Mohammad v. Saroda Moihan Maitra* (1900), 4 C. W. N., 695. See *Puran Mal v. Janki Pershad*

Singh (1901), 28 Calo., 680, at p. 684; 6 C. W. N., 114, at p. 118.

³ *Anthony v. Dupont* (1881), 4 Mad., 217. See, however, *Deep Chand v. Gouree* (1870), 18 W. R. O. R., 98.

CHAPTER XXX.

APPEALS TO HIS MAJESTY IN COUNCIL.

THE right of appeal from a High Court to His Majesty in Council rests on its Letters-Patent,¹ read with sections 109 and 110 and Order 45, rule 3, of the Civil Procedure Code (Act V of 1908), and certain statutory provisions.

Right of
appeal.

There is no appeal as of right to His Majesty in Council, except where a right of appeal is expressly given.²

Judicial
Committee

All appeals to His Majesty in Council in judicial matters are dealt with by the Judicial Committee of the Privy Council.

In acts of State the Committee has no jurisdiction.³

The constitution and jurisdiction of that Committee are to be found in the following enactments :

Constitution of
Judicial
Committee.

By the Judicial Committee Act, 1833, the President for the time being of His Majesty's Privy Council and such of the members thereof as shall from time to time hold either of the offices of Lord Keeper or first Lord Commissioner of the great seal of Great Britain, and also all members of such Privy Council who shall have been president thereof or shall have held either of the above offices, shall form a committee of His Majesty's Privy Council, and shall be styled "The Judicial Committee of the Privy Council."

Provided that His Majesty may from time to time, as and when he shall think fit, by his sign manual, appoint any two other persons, being Privy Councillors, members of such Committee.⁴

¹ *Ante*, pp. 67, 75, 81, 87, 93.

² See *Rangoon Botatoung Company v. Collector, Rangoon* (1912), 89 I. A., 197; 40 Calc., 21; 16 C. W. N., 961; 14 Bom. L. R., 893; *Special Officer, Salsette Building Sites v. Dosabhai Bessonji* (1912), 37 Bom., 506; 14 Bom. L. R., 1194, upheld on appeal (1913),

17 C. W. N., 421.

³ *In re Nawab of Surat* (1854), 5 M. I. A., 499; *Madhava Singh (Maharajah) v. Secretary of State* (1904), 81 I. A., 289; 32 Calc., 1; 8 C. W. N., 841; 6 Bom. L. R., 768.

⁴ 3, 4 Will. IV. c. 41, s. 1, as amended.

By the Court of Chancery Act, 1851,¹ no matter shall be heard nor shall any order, report, or recommendation be made by the Judicial Committee in pursuance of any Act, unless in the presence of at least three members of the said Committee, exclusive of the Lord President of His Majesty's Privy Council for the time being. Three members necessary.

By the Judicial Committee Act, 1881,² every person holding or who has held in England the office of a Lord Justice of Appeal shall, if a member of His Majesty's Privy Council in England, be a member of the Judicial Committee. Lords Justices.

By the Appellate Jurisdiction Act, 1887,³ the Judicial Committee includes such members of His Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876,⁴ or in the above Act, described as high judicial office.

The expression "high judicial office" includes the office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of one of His Majesty's superior Courts of Great Britain and Ireland.⁴ "High judicial office."

"Superior Courts" of Great Britain and Ireland means and includes: "Superior as to England, His Majesty's High Court of Justice and His Majesty's Court of Appeal, and the superior Courts of law and equity in England as they existed before the constitution of His Majesty's High Court of Justice; and as to Ireland, the superior Courts of law and equity in Ireland; and as to Scotland, the Court of Session."⁵ "Superior Courts."

By the Appellate Jurisdiction Act, 1887,⁷ the office of a Lord of Appeal in Ordinary and that of a member of the Judicial Committee of the Privy Council have been added.

By the Judicial Committee Amendment Act, 1895,⁸ if any person being or having been Chief Justice or a Judge of the Supreme Court of the Dominion of Canada, or of a Superior Court in any Province of Canada, or of any of the Australasian colonies mentioned in the schedule to that Act, or of either of the South African colonies mentioned in such schedule,⁹ Colonial Chief Justices or Judges.

¹ 14, 15 Vict. c. 83; 16 Vict. c. 12, s. 16.

² 44, 45 Vict. c. 8, s. 1.

³ 50, 51 Vict. c. 70, s. 3.

⁴ 39, 40 Vict. c. 59, s. 25.

⁵ There are now Courts of Judicature in Northern and Southern Ireland respectively. Judges of such Courts would apparently come within

the definition. See 10, 11 Geo. V. c. 67, ss. 39, 40.

⁶ 39, 40 Vict. c. 59, s. 25.

⁷ 50, 51 Vict. c. 70, s. 6.

⁸ 58, 59 Vict. c. 44, s. 1.

⁹ The schedule now includes the Transvaal and the Orange River Colony: 8 Edw. VII. c. 51, s. 3 (2).

or of any other Superior Court in His Majesty's Dominions named in that behalf by His Majesty in Council, is a member of His Majesty's Privy Council, he shall be a member of the Judicial Committee.

The number of persons being members of the Judicial Committee by reason of this Act shall not exceed seven at any one time.

This section has been amended so as to include a Chief Justice or a Justice of the High Court of Australia or Chief Justice or Judge of the Supreme Court of Newfoundland.¹

Assessor.

By the Appellate Jurisdiction Act, 1908, for the purpose of the hearing of any appeal to His Majesty in Council from any Court in a British possession, His Majesty may, if he thinks fit, authorise any person who is or has been a Judge of the Court from which the appeal is made, or a Judge of a Court to which an appeal lies from the Court from which the appeal is made, and whose services are for the time being available, to attend as an assessor of the Judicial Committee of the Privy Council on the hearing of the appeal.²

This provision applies to Judges of Courts in India.³

Judges in
British India.

If any person being or having been Chief Justice or Judge of any High Court in British India⁴ is a member of His Majesty's Privy Council, he shall, if His Majesty so directs, be a member of the Judicial Committee.⁵

The number of persons being members of the Judicial Committee by reason of this section shall not exceed two at one time.⁶

Resignation.

Any member of the Judicial Committee may resign his office as member of that Committee by giving notice in writing to the Lord President of the Council.⁷

Divisions of
Judicial
Committee.

The Judicial Committee may, subject to the approval of the Lord Chancellor and the Lord President of the Council, sit in more than one division at the same time, and in such case anything which may be done to, by, or before the Judicial Committee may be done to, by, or before any such division of the Judicial Committee.⁸

¹ 8 Edw. VII. c. 51, s. 8 (1).

² *Ibid.* s. 1 (1).

³ *Ibid.* s. 1 (3), Sch.

⁴ "High Court in British India" means the High Court of Bengal, Madras, Bombay, or North-Western Provinces or any other Court in

British India which may for the time being be recognised for the purpose by Order in Council, s. 2 (3).

⁵ 8 Edw. VII. c. 51, s. 2 (1).

⁶ *Ibid.* s. 2 (2).

⁷ *Ibid.* s. 4.

⁸ 5, 6 Geo. V. c. 92, s. 1 (2).

All appeals or complaints in the nature of appeals whatever which either by virtue of the Judicial Committee Act, 1833,¹ or of any law, statute, or custom may be brought before His Majesty or His Majesty in Council from or in respect of the determination, sentence, rule or order of any Court, Judge or judicial officer shall be referred by His Majesty to the Judicial Committee of the Privy Council, and such appeals, causes, and matters shall be heard by the said Committee, and a report or recommendation thereon shall be made to His Majesty in Council for his decision thereon as theretofore, in the same manner and form as had been the custom with respect to matters referred by His Majesty to the whole of his Privy Council or a Committee thereof the nature of such report or recommendation being always stated in open Court.²

Appeals to be referred to Committee.

His Majesty may refer to such Committee for hearing or considering any such other matters whatsoever as His Majesty shall think fit.³

Reference of other matters.

His Majesty in Council may make a general order of reference of all appeals to the Judicial Committee.⁴

General order of reference.

No report or recommendation shall be made to His Majesty unless the majority of such Committee at the hearing shall concur in such report or recommendation :

Concurrence of majority.

Provided always, that His Majesty may summon any other members of the Privy Council to attend the meetings of the Committee.⁵

Other members of Council may be summoned.

The costs incurred in the prosecution of any appeal or matter referred to the Judicial Committee, and of such issue as such Committee shall direct, shall be paid by such party, or parties, person or persons, as the Committee shall direct.⁶

Costs.

The order or decree of His Majesty in Council on any appeal from the order, sentence, or decree of any Court of Justice in the East Indies . . . shall be carried into effect in such manner and subject to such limitations and conditions as His Majesty in Council shall, on the recommendation of that Judicial Committee, direct; and His Majesty in Council may on such recommendation direct that such Court of Justice shall carry the same into effect accordingly, and

Execution of decrees.

¹ 3, 4 Will. IV. c. 41.

² *Ibid.* s. 3.

³ *Ibid.* s. 4; *Schlumberger's Patent* (1858), 9 Moo. 1.

⁴ 6, 7 Vict. c. 38, s. 11; 7, 8 Vict. c. 69, s. 9; 8 Edw. VII. c. 51, s. 5.

⁵ 3, 4 Will. IV. c. 41, s. 5.

⁶ *Ibid.* s. 15.

thereupon such Court of Justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by His Majesty in Council.¹

As to the power of enforcing decrees, see 3, 4 Will. IV. c. 41, s. 28.

The following provisions with regard to appeals to His Majesty in Council are to be found in the Civil Procedure Code (Act V of 1808).

As to the right of appeal conferred by the Letters-Patent of the several High Courts, see *ante*, pp. 67, 75, 81, 87, 98.

As to appeals under the Colonial Courts of Admiralty Act, 1890,² see *post*, pp. 408, 409.

Appeals to
King in
Council.

"Section 109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

"(a) from any decree or final order passed on appeal³ by a High Court or any other Court of final appellate jurisdiction;

"(b) from any decree or final order⁴ passed by a High Court in the exercise of original civil jurisdiction, and

"(c) from any decree or order⁵ where the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council."

"Decree."

As to the definition of "decree," see *ante*, p. 385. The expression "decree" in section 109 includes the determination of a question relating to the execution, discharge, or satisfaction of the decree, provided that the judgment sought to be appealed from conclusively determines the rights of the parties in that matter.⁶

It does not include non-judicial matters such as an act of State,⁷ or

¹ 3, 4 Will. IV. c. 41, s. 21.

² 53, 54 Vict. c. 27, s. 6.

³ This does not include every order made in the exercise of appellate jurisdiction, such as an order rejecting an application to amend a decree: *Of. Sunder Koer v. Chandishwar Prasad Singh* (1903), 30 Cal., 679, *ante*, p. 67.

⁴ This includes an order refusing an application: *Alcock, Ashdown Co. v. Chief Revenue Authority, Bombay*

(1921), 23 Bom. L. R., 1132.

⁵ This includes an interlocutory order: *Siva Prasad Singh v. Prayag Kumari Debi (Rani)* (1922), 49 Cal., 967; 26 C. W. N., 819; *post*, p. 380.

⁶ *Bajjnath Goenka Bahadur (Rai) v. Rameswar Singh (Maharaja Sir)*, [1918 Pat.], 81. *Of. Ram Kirpal Shukul v. Rup Kuar* (1881), 3 All., 633.

⁷ *Ante*, p. 374.

justify an appeal on the ground of an error in a Government notification.¹ It includes an award or part of an award under the Land Acquisition Act.²

An appeal is competent in Insolvency matters.³

"Final order" means an order which finally disposes of the rights⁴ "Final order." and liabilities⁵ of the parties.

It includes, for example :

(a) a decision on a question of *res judicata*,⁶ which decides the case;⁷

(b) an order of the High Court setting aside a decision of the trial Court dismissing a suit for want of prosecution;⁸

(c) an order directing accounts to be taken;⁹

(d) an order deciding whether an order of the lower Court recording a compromise was valid.¹⁰

It does not include :

(a) an order of remand,¹¹ except where the order decides the cardinal point in the case;¹²

(b) a reversal of an order staying a suit;¹³

(c) an order giving leave to sue in *forma pauperis*;¹⁴

¹ *In the matter of Sukhnandan Lal* (1884), 6 All., 163.

² Act XIX of 1921, s. 3, amending Act I of 1894.

³ *Chatrapat Singh Dugar v. Kharrag Singh Lachmiram* (1918), 40 Cal., 685; 17 C. W. N., 752; s.c. in P. C., post, p. 426, n. 4.

⁴ *Ramchand Manjimal v. Goverdhandas* (1920), 47 I. A., 124; 47 Cal., 918; 24 C. W. N., 721; 22 Bom. L. R., 606; *Sajjad Ali Khan v. Ishaq Khan* (1919), 42 All., 174; *Dirgpal Singh v. Pahladi Lal* (1919), 42 All., 176; *Harish Chandra Acharja v. Nawab Bahadur of Murshidabad* (1911), 15 C. W. N., 879.

⁵ *Rakimbhoy Hlibibhoy v. Turner* (1890), 18 I. A., 6; 15 Bom., 155; *Muzhar Husein (Syed) v. Bodha Bibi* (1894), 22 I. A., 1; 17 All., 112; *Dwarka Nath Sarkar v. Mahomed Akbar (Haji)* (1910), 15 C. W. N., 60; *Ananda Gopal Gossain v. Nafar Chandra Pal Chowdhry* (1908), 35 Cal., 618; 12 C. W. N., 545.

⁶ *Khagendra Nandan Asram v. Sahayram Chuckerbutty* (1921), 25 C. W. N., 896.

⁷ *Sajjad Ali Khan v. Ishaq Khan* (1919), 42 All., 174.

⁸ *Lachmi Narain Marwari v. Balmakund Marwari* (1921), 6 Pat. L. J., 116.

⁹ See *Dwarkanath Sarkar v. Mahomed Akbar (Haji)* (1910), 15 C. W. N., 60.

¹⁰ *Rajkishore Das v. Ram Ghulam Sahu* (1921), 6 Pat. L. J., 171.

¹¹ *Venkataranga Row v. Narasimha Row* (1918), 38 Mad., 509; *Habib-un-nissa v. Munawar-un-nissa* (1908), 25 All., 629; *Ahmad Husain v. Gobind Krishna Narain* (1911), 38 All., 391; *Birendranath Roy (Kumar) v. Nripendranath Roy (Kumar)* (1917), 22 C. W. N., 640; *Melir Chand v. Labhu Ram* (1921), 2 Lahore, 106; *Dirgpal Singh v. Pahladi Lal* (1919), 42 All., 176; *Shankar Bharati v. Narasinha Bharati* (1922), 24 Bom. L. R., 925.

¹² *Bajinath Goenka Bahadur (Rai) v. Rameswar Singh* [1918 Pat.], 81; *Muzhar Husein (Syed) v. Bodha Bibi* (1894), 22 I. A., 1; 17 All., 112; *Dwarkanath Sarkar v. Mahomed Akbar (Haji)* (1910), 15 C. W. N., 60; *Ananda Gopal Gossain v. Nafar Chandra Pal Chowdhry* (1908), 35 Cal., 618; 12 C. W. N., 545.

¹³ *Rām Chand Manjimal v. Goverdhandas* (1920), 47 I. A., 124; 47 Cal., 918; 24 C. W. N., 721; 22 Bom. L. R., 606.

¹⁴ *Sakan Sing (Babu) v. Gopal Chandra Neogi* (1904), 8 C. W. N., 296. See *Harish Chandra Acharja*

(d) an order for the appointment of a Receiver; ¹

(e) an order for the dismissal of an official appointed by the Crown or by Government;²

The Judicial Committee recommended the allowance of special leave to appeal in the case of the Master of the Supreme Court of Madras, who had been dismissed by that Court.³

(f) A matter of discipline, as the suspension of a pleader; ⁴

(g) a conviction for contempt of Court.⁵

Leave was given in a case as to the custody of an infant.⁶

Interlocutory orders.

It was held that appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation and finally decide the rights of the parties,⁷ and that other interlocutory orders can be dealt with by the Judicial Committee when the appeal on the whole case comes before them.⁸

Revision.

The section applies to a final order in revision,⁹ or in exercise of a High Court's power of superintendence.¹⁰

Special cases.

But Section 109 (c) is clearly intended to meet special cases—such, for example, as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely to the discretion of the Court, is a judicial process which could not be performed without special exercise of that discretion, evinced by the fitting certificate.¹¹ It is not confined to final orders.¹²

Certificate.

Such certificate was granted in one case where the decision would be of great importance to the applicant company and to other companies,¹³

v. Nawab Bahadur of Murshidabad (1911), 15 C. W. N., 879.

¹ *Chundi Dutt Jha v. Pudmanund Singh* (1895), 22 Calo., 928.

² See *Ex p. Robertson* (1858), 11 Moo. P. C., 288; *In re Sreemohun Ghuthuck* (1870), 18 M. I. A., 848.

³ *In re Minchin* (1847), 4 M. I. A., 220.

⁴ *Birkishore Roy v. King-Emperor* (1919), 4 Pat. L. J., 423.

⁵ *Surendranath Banerjee v. Chief Justice and Judges of the High Court of Bengal* (1888), 10 I. A., 171; 10 Calo., 109.

⁶ *In the matter of Skinner* (1870), 18 M. I. A., 582.

⁷ *Sajjad Ali Khan v. Ishaq Khan* (1919), 42 All., 174.

⁸ See *Moheshur Singh (Maharajah) v. Bengal Government* (1869), 7 M. I. A., 283; 8 W. R. P. C., 45; *Sheonath v. Ramnath* (1865), 10 M. I. A., 413; 5 W. R. P. C., 21; *Forbes v. Ames-*

roonissa Begum (1865), 10 M. I. A., 340; 5 W. R. P. C., 47.

⁹ *Harish Chandra Acharja v. Nawab Bahadur of Murshidabad* (1911), 15 C. W. N., 879; *Secretary of State v. British India Steam Navigation Company* (1911), 15 C. W. N., 848.

¹⁰ *Secretary of State v. British India Steam Navigation Company* (1911), 15 C. W. N., 848.

¹¹ *Banarsi Parshad v. Kashi Krishna Narain* (1900), 28 I. A., 11, at p. 14; 23 All., 227, at pp. 281, 232; 5 C. W. N., 193, at p. 195; 3 Bom. L. R., 154; *Radha Krishna Ayyar v. Swaminatha Ayyar* (1920), 48 I. A., 31; 44 Mad., 293; 25 C. W. N., 680; 23 Bom. L. R., 718.

¹² *Siva Prosad Singh v. Prayag Kumari Debi (Rani)* (1922), 49 Calo., 967; 26 C. W. N., 819.

¹³ *Bombay Burmah Trading Corporation v. Dorabjee Shroff* (1903), 27 Bom., 415; 5 Bom. L. R., 848.

and in another case where the point in dispute, though not measurable in money, was of considerable importance, namely, the extent of the control acquired by one who had built a Parsee temple.¹

In the following cases the High Court refused to give leave to appeal under section 109 (c):²

(a) an order dismissing an appeal for default in furnishing security for costs;³

(b) a consent decree;

(c) an order refusing to enrol the applicant as a legal practitioner.⁴

The fact that a particular construction of an Act may affect persons not parties to the litigation is not a ground for granting a certificate.⁵

It is of the utmost importance that a certificate of leave to appeal should show on its face that the discretion had been exercised.⁷

“Section 110. In each of the cases mentioned in classes (a) and (b) of section 109 the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards,⁸ and the amount or value of the matter in dispute on appeal to His Majesty in Council must be the same sum or upwards.⁹

* “or the decree or final order must involve, directly or indirectly,¹⁰ some claim or question¹¹ to, or respecting, property of like amount or value;

“and where the decree or final order appealed from

Value of
subject-matter.

Concurrent
finding.

¹ *Navroji v. Kharsedji* (1904), 6 Bom. L. R., 286.

² *Ante*, p. 878.

³ *Muhammad Abdul Ghafur Khan v. Secretary of State* (1914), 36 All., 325.

⁴ *Lachmi Narayan v. Bal Makund* [1920 Pat.], 349. See *Raj Kishore Das v. Ram Ghulam Sahu* (1921), 6 Pat. L. J., 171.

⁵ *In re Sudhansu Bala Hasra* (1922), 1 Pat., 590. See *post*, p. 885, n. 6.

⁶ *Mritunjoy Praharaj v. Balmakund Kanungoe* (1921), 6 Pat. L. J., 125.

⁷ *Bahadur Singh (Maharaj) v. Balchand Chowdhry* (1920), 25 C. W. N., 770.

⁸ As to the case of an increase of the value since the filing of the plaint, see *Rash Mohun Lal v. Ram Mohan*

Lal [1919 Pat.], 241.

⁹ That is to say at the time of the judgment or final order: *Surendra Nath Roy v. Dwarkanath Chakravarti* (1916), 44 Cal., 119; 21 C. W. N., 530. *In the matter of Khwaja Muhammad Yusuf* (1896), 18 All., 196.

¹⁰ See *Bhupendra Narayan Singh v. Nurput Singh* (1922), 27 C. W. N., 204; *Appaya v. Lakhamgowda* (1922), 25 Bom. L. R., 77.

¹¹ It has been held that this refers only to existing suits (*Hanuman Prasad v. Bhagwati Prasad* (1902), 24 All., 236), but it is submitted that the expression “claim or question” is not so limited. See *Sri Kishan Lal v. Kashmiro* (1918), 35 All., 445; *Srinath Pal Chowdhury v. Girindra Chandra Pal Chowdhury* (1906), 14 C. W. N., 651.

affirms the decision¹ of the Court immediately below² the Court passing such decree or final order, the appeal must involve some substantial question of law."³

Valuation.

Apart from the rules laid down as to the valuation of suits, the following are the results of decisions with regard to the fixing the value of the subject-matter of the appeal to His Majesty in Council.

Value of matter in dispute.

The right of appeal depends upon the value of the matter of dispute,⁴ which is a question of fact, and does not depend upon the stamp duties payable.⁵ In order to determine such value, the decree has to be looked at as it affects the interests of the parties prejudiced by it,⁶ i.e. the share claimed, and in dispute.⁷

The certificate of the Court in India as to value is not conclusive.⁸

"Matter in dispute."

The "matter in dispute" means the matter in dispute between the parties to the appeal.⁹

Mesne profits.

A claim for mesne profits, at least up to the time of the decree or final order of the High Court, can be added to the amount of the original decree of the original Court so as to make up the appealable amount;¹⁰ but interest on decree cannot be so added.¹¹

Easement.

As to the valuation of an easement for the purpose of this section, see *Manilal v. Banubai* (1920), 23 Bom. L. R., 374.

¹ "Decision" is here equivalent to decree: *Tasadduq Rasul Khan (Rajah) v. Manik Chand* (1902), 30 I. A., 85; 25 All., 109; 7 C. W. N., 177; 5 Bom. L. R., 100. As to the case where the decision of a single judge of the High Court has been reversed, see *Debendra Nath Das v. Bibudhendra Mansingh* (1915), 43 Cal., 90.

² *Bhagwan Singh v. Allahabad Bank* (1920), 43 All., 220. This includes the case of the appeal to the High Court being dismissed for want of prosecution: *Beni Rai v. Ram Lakhon Rai* (1898), 20 All., 367. Where the decree of the lower Court was modified only in favour of the would-be appellant no appeal lies to His Majesty in Council: *Kamal Nath v. Bithal Das* (1921), 44 All., 200.

³ *Prakash Chandra Sarkar v. Brindaban Chandra Sarkar* [1922 Pat.], 296. This restriction is not *ultra vires*: *In re Feda Hossein* (1876), 1 Cal., 481.

⁴ *Pichayee v. Sivagami* (1891), 15 Mad., 237.

⁵ *Lekhraj Roy v. Kanhya Singh* (1874), 1 I. A., 817; *Hari Mohan Misser v. Surendra Narain Singh*

(1903), 31 Cal., 301.

⁶ *Bhaunath Gir (Gossain) v. Bijari Lal*, [1919 Pat.], 257, following *De Silva v. De Silva* (1904), 6 Bom. L. R., 403.

⁷ *Raoji v. Laxmibai* (1919), 44 Bom., 104; 22 Bom. L. R., 243.

⁸ *Radhakrishna Ayyar v. Sundaraswami* (1922), 49 I. A., 211; 45 Mad., 475.

⁹ *Radha Kunwar v. Reoti Singh* (1916), 43 I. A., 187; 38 All., 488; 20 C. W. N., 1279; 18 Bom. L. R., 850; *Raghunath Persad Singh v. Yahya Hussain (Syed)*, [1917 Pat.], 301.

¹⁰ *Mahabir Prasad Singh v. Anup Narain Singh* (1918), 8 Pat. L. J., 377; *Dalgleish v. Damodar Narain Chowdhry* (1906), 33 Cal., 1286; *Basanta Kumar Roy v. Secretary of State* (1910), 14 C. W. N., 872. A different view was taken in *Subramania Ayyar v. Sellammal* (1915), 39 Mad., 843.

¹¹ *Nand Kishore Singh v. Ram Gulam Sahu* (1912), 39 Cal., 1037; 16 C. W. N., 1089. Cf. *Kesho Prasad Singh (Maharaja) v. Shiva Saran Lal* (1918), 3 Pat. L. J., 317.

As they are incapable of valuation, an appeal does not lie, in the absence of special leave, in the case of a suit for the restitution of conjugal rights,¹ or of a suit for a declaration that the plaintiff was a Rajput.²

Where there is a concurrent finding³ of fact an appeal is only justified where there is a substantial question of law arising on the basis of such finding of fact,⁴ except where there has been a miscarriage of justice or the violation of any principle of law or procedure.⁵

The following have been held to be substantial questions of law :

Substantial
questions of
law.

(a) a question whether a tenancy was at will or of a permanent nature;⁶

(b) a question whether there is evidence to support a finding;⁷

(c) a question as to the legal position of the holder of a succession certificate;⁸

(d) a question of inference from documents.⁹

There is no substantial question of law :

(a) where in a suit for malicious prosecution, the absence of malice has been found by both Courts;¹⁰

(b) where the Appellate Court refused to allow additional evidence;¹¹

(c) where a document not produced in the original Court was produced on appeal;¹²

(d) where the Court omitted to record reasons for agreeing with the original Court;¹³

(e) where the Court omitted to make a minute narrative of the circumstances;¹⁴

¹ *Mowla Newaz v. Sajidunnissa Bibi* (1891), 18 Cal., 378.

² *Ghulam Rasul Khan v. Secretary of State* (1921), 2 Lahore, 297.

³ As to concurrent findings when the Appeal Court consists of three judges, see *Habibur Rahman Chowdhury v. Altaf Ali Chowdhury* (1921), 48 I. A., 114; 48 Cal., 856; 26 C. W. N., 81; 23 Bom. L. R., 636.

⁴ *Sukalbutti v. Babulal Mandar* (1901), 28 Cal., 190; 5 C. W. N., 455; *Banke Lal v. Jagat Narain* (1900), 23 All., 94, differing from *Moran v. Mittu Bibee* (1876), 2 Cal., 228, and *Gopinath Birbar v. Goluck Chunder Bose* (1884), 16 Cal., 292, note. See *In re Vishwambhar Pandit* (1895), 20 Bom., 699.

⁵ *Srimati (Rani) v. Khajendra Narayan Singh* (1904), 31 I. A., 127; 31 Cal., 871; 9 C. W. N., 74.

⁶ *Surendra Nath Roy v. Dwarkanath Chakravarti* (1916), 44 Cal.,

119; 21 C. W. N., 530.

⁷ *Harendra Lal Roy Chowdhury v. Hari Dasi Debi* (1914), 41 I. A., 110, at p. 119; 41 Cal., 972, at p. 988; 18 C. W. N., 817, at p. 827; 16 Bom. L. R., 400, at p. 411.

⁸ *Najm-un-nissa Bibi v. Amina Bibi* (1916), 38 All., 188.

⁹ *Satgur Prashad (Chaudhri) v. Kishore Lal* (1919), 46 I. A., 197; 42 All., 152; 24 C. W. N., 394.

¹⁰ *Pestonjee M. Mody v. Queen Insurance Company* (1900), 25 Bom., 332; 4 C. W. N., 781.

¹¹ *In goods of Prem Chand Moonshie* (1894), 21 Cal., 484.

¹² *Shuja Ali Khan v. Ram Kuar* (1897) 20 All., 118.

¹³ *Sundar Bibi v. Bishesharnath* (1886), 9 All., 93.

¹⁴ *Sajjad Husain (Mirsa) v. Wasir Ali Khan (Nawab)* (1912), 39 I. A., 156; 34 All., 455; 14 Bom. L. R., 1055.

(f) where the appeal was dismissed for default in giving security,¹ or for failure to deliver a list of papers.²

An appeal to His Majesty in Council can only be considered where the certificate given by the High Court is clearly in accordance with the terms of the section.³

Consideration
by Judicial
Committee.

The Judicial Committee will greatly defer on the question of value to the certificate given by the High Court.⁴

An appeal admitted contrary to this section will be dismissed without being heard.⁵

Pauper
appeals.

A High Court cannot give leave to appeal in *forma pauperis*.⁶

Bar of certain
appeals.

"Section 111. Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council :

"(a) from the decree or order of one Judge of a High Court established under the India High Courts Act, 1861,⁷ or the Government of India Act, 1915,⁸ or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being; or

"(b) from any decree from which under section 102 no second appeal lies.

Savings.

"Section 112.—(1) Nothing contained in this Code shall be deemed :

"(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever,⁹ or "

¹ *Muhammad Abdul Ghafur Khan v. Secretary of State* (1914), 36 All., 325.

² *Rajendra Kishore v. Rajkumar Kamakya Narain Singh* (1920), 5 Pat. L. J., 719.

³ See *Banarsi Parsad v. Kashi Krishna Narain* (1900), 28 I. A., 11; 23 All., 227; 5 C. W. N., 198; 3 Bom. L. R., 154; *Radha Krishn Das v. Rai Krishn Chand* (1901), 28 I. A., 182; 23 All., 415; 5 C. W. N., 689; 3 Bom. L. R., 469; *Radhakrishna Ayyar v. Swaminatha Ayyar* (1920), 48 I. A., 81; 44 Mad., 298; 25 C. W. N., 680; 23 Bom. L. R., 718; *Maharaj Bahadur Singh v. Balchand* (1920), 48 I. A., 376; 25 C. W. N., 770. See

O. 45, r. 3, of Act V of 1908.

⁴ See *Radhakrishna Ayyar v. Sundaraswamier* (1922), 49 I. A., 211; 45 Mad., 475.

⁵ *Karuppanan Servai v. Srinivasan Chetti* (1901), 29 I. A., 88; 25 Mad., 215; 6 C. W. N., 241; 4 Bom. L. R., 248; *Banarsi Pershad v. Kashi Krishna Narain* (1900), 28 I. A., 11; 23 All., 227; 5 C. W. N., 198; 3 Bom. L. R., 154.

⁶ *Ramkishan Lal v. Manna Kumri* (1916), 8 Pat. L. J., 179.

⁷ 24, 25 Viet. c. 104, *ante*, p. 19.

⁸ 5, 6 Geo. V. c. 61; Act XIII of 1916, Sch.

⁹ See *Rahimbhoy v. Turner* (1891),

Special leave is only given to appeal where there is an important question of law not merely affecting the rights between two persons.¹

"(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

"(2) Nothing herein contained applies to any matter of criminal or Admiralty . . .² jurisdiction, or to appeals from orders and decrees of Prize Courts."

Order 45, rule 4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgments³ may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.⁴

The Judicial Committee can recommend special leave to appeal in cases where there is no appeal as of right. In one case they recommended leave to appeal against an order dismissing the Master of the Supreme Court of Madras,⁵ and in another case they recommended such leave in a case where a woman was refused enrolment as a pleader on the ground of her sex.⁶

They refused such recommendation in the case of an application by a Munsif who had been discharged.⁷

A High Court may stay execution proceedings pending an application for special leave.⁸

Rule 5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of

Remission of dispute to Court of first instance.

18 I. A., 6; 15 Bom., 155; *Ikrumul Hug v. Wilkie* (1906), 38 Calc., 893; 11 C. W. N., 946; *Moti Chand v. Ganga Parshad Singh* (1901), 29 I. A., 40; 24 All., 174; 6 C. W. N., 362; 4 Bom. L. R., 159; *Sadagopa Chariar v. Rama Rao* (1907), 34 I. A., 93, at p. 99; 30 Mad., 185, at p. 188; 11 C. W. N., 585, at p. 591; 9 Bom. L. R., 668.

¹ *Khan Sahib v. Markanda Kothan* (1921), P. C., 26 C. W. N., xxxi. As to an appeal from a conviction for contempt of Court, see *Surendranath Banerjee v. Chief Justice and Judges of High Court of Bengal* (1883), 10 I. A., 171; 10 Calc., 109.

² See ante, p. 62.

³ I.e. judgments appealed from: *Deokinandan Prasad v. Narsing Raut* (1921), 6 Pat. L. J., 97; [1921 Pat.].

T. C.J.I.

145. See *Byjnath v. Graham* (1885), 11 Calc., 740; *Joogul Kishore v. Jotendromohun Tagore* (1882), 8 Calc., 210; *Bhagwan Singh v. Bhawani Das* (1920), 48 All., 223.

⁴ As to the case when there is no consolidation but one decree has been drawn up, see *Vaithilinga Mudaliar v. Somasundaram Chettiar* (1918), 42 Mad., 228; *Royal Insurance Company v. Akhoy Coomarr Dutt* (1901), 6 C. W. N., 41.

⁵ *In re Minchin* (1847), 4 M. I. A., 220.

⁶ *In re Sudhansu Bala Harra*, 21/11/22, P. C. See s.c. in Court below (1922), 1 Pat., 590.

⁷ *In re Sree Mohun Ghutuck* (1870), 13 M. I. A., 348.

⁸ *Nanda Kishore Singh v. Ram Golam Sahu* (1912), 40 Calc., 955.

the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it think fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report, together with the evidence, to the Court by which the reference was made.¹

Execution. As to execution pending appeal, see Act V of 1908, Order 45, rule 18; *Nityamoni Dasi (Srimati) v. Madhu Sudan Sen* (1911), 38 I. A., 74; 38 Calc., 835; 18 Bom. L. R., 419; *Nanda Kishore Singh v. Ram Golam Sahu* (1912), 40 Calc., 955.

A subordinate Court cannot stay the execution of a decree passed by the High Court, pending the disposal of an appeal to His Majesty in Council.²

Receiver. As to the appointment of a Receiver, see *Wazir Narain Singh (Raja) v. Jagadamba Kuar (Rani)*, 4 Pat. L. J., 482; [1920 Pat.], 184.

As to appeals to His Majesty in Council in suits against Dekkhan Sirdars, see Bombay Regulation XXIX of 1827, sec. 5, *ante*, p. 151.

¹ See *Anant Narayan v. Ramchandra Gangadhar* (1918), 42 Bom., 609; 20 Bom. L. R., 418.

² *Ram Bahadur v. Radha Krishen Chanderji* (1917), 3 Pat. L. J., 40; [1917 Pat.], 285.

PART V.

JURISDICTION OF COURTS UNDER SPECIAL ACTS.

THIS part deals with the jurisdiction given by the Legislature to certain of the ordinary Courts to deal with certain specified matters.

Unless otherwise provided, the jurisdiction of the Court is determined by the Act by which it is given, and the Court to which jurisdiction is given is bound to follow the terms of the particular Act so far as it goes. Special procedure.

If a special procedure be provided an ordinary suit does not lie.¹

Thus a suit does not lie to set aside an order made :

(a) under section 7 of the Presidency Towns Insolvency Act, 1909 (III of 1909) ;²

(b) for the appointment of a guardian.³

CHAPTER XXXI.

ADMINISTRATION OF ESTATES OF DECEASED PERSONS.

Probates and Letters of Administration.

AS we have seen, the High Courts at Calcutta,³ Bombay,⁴ High Courts. Madras,⁵ Allahabad,⁶ and Patna,⁷ can by virtue of their Letters-Patent grant probate of the wills and letters of administration to the estates of European British subjects leaving property within the limits of their respective Provinces, and in the case of the High Courts at Calcutta, Madras, Bombay, and Rangoon, to the estates of all persons

¹ See *Besant v. Narayaniah* (1914), 41 I. A., 314 ; 38 Mad., 807 ; 18 C. W. N., 1089 ; 16 Bom. L. R., 625 ; *Sham Lal v. Bindo* (1904), 26 All., 594.

² *Abdul Latheef v. Official Assignee of Madras* (1912), 40 Mad., 1173 ;

Goolbai v. Behramsha (1913), 38 Bom., 615.

³ *Ante*, pp. 63, 64.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ante*, pp. 73, 74.

⁷ *Ante*, p. 80.

leaving property within the respective limits of their ordinary original civil jurisdiction, namely, in the towns of Calcutta, Madras, Bombay, and Rangoon.

As to the powers of the High Court at Lahore, see Act V of 1881, s. 2, *post*, p. 390, and *ante*, p. 87.

Succession
Act.

Power is given by the Indian Succession Act, 1865 (X of 1865), and the Probate and Administration Act, 1881 (V of 1881), to grant probates of wills and letters of administration to the estates of deceased persons.

The Indian Succession Act applies throughout British India¹ except in the case of Hindus, Buddhists,² or Mahomedans.

It has been declared in force in the Santhal Parganas,³ in the Arakan Hills District (but not so as to affect Native Christians),⁴ in Upper Burma (except the Shan States),⁵ and in British Baluchistan.⁶

Exemption
from Indian
Succession Act.

The Local Government has power to exempt by order from the operation of the whole or any part of the Indian Succession Act the members of any race, sect, or tribe in the territories administered by the Local Government, or any part of such race, sect, or tribe to whom the Local Government may consider it impossible or inexpedient to apply the provisions of that Act, or of the part of the Act mentioned in the order.

The Local Government can from time to time revoke such order.⁷

Hindu Wills
Act.

The Hindu Wills Act, 1870,⁸ applied certain sections of the Indian Succession Act, 1865,⁹ to:

- (a) all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after the 1st of September, 1870, within what are now the territories subject to the Governors of Bengal, and of Bihar and Orissa, and the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras¹⁰ and Bombay;¹¹ and
- (b) all such wills and codicils made outside those territories and limits, so far as relates to immovable property situated within those territories or limits.

¹ Act X of 1865, s. 2.

² *Ibid.* s. 381. As to Brahmos, see *In the goods of Jnanendra Nath Roy* (1922), 49 Calo., 1069; 26 C. W. N., 799.

³ Reg. III of 1872, s. 3, Sch.

⁴ Reg. IX of 1874, s. 3.

⁵ Act XIII of 1898, s. 4, Sch. I.

⁶ Reg. I of 1890, s. 3, Sch.

⁷ Act X of 1865, s. 382, as amended by Act XXXVIII of 1920, Sch. I.

⁸ Act XXI of 1870, s. 2.

⁹ Act X of 1865.

¹⁰ *Ante*, pp. 37, 38.

¹¹ *Ibid.*

The Probate and Administration Act, 1881, has now taken the place of such of those provisions as relate to the grant of probate or letters of administration.¹ Probate and Administration Act.

That Act applies to the whole of British India.²

It has been declared in force in the following Scheduled Districts, viz.: in the Santhal Parganas,³ in Upper Burma (except the Shan States),⁴ and in British Baluchistan.⁵

Sections 4 to 147 of that Act apply in the case of every Hindu, Mahomedan, or Buddhist, and persons excepted under section 392 of the Indian Succession Act.⁶

The District Judge⁷ within the limits of whose jurisdiction the deceased at the time of his death had his fixed place of abode, or had⁸ some property, movable or immovable, can grant or revoke⁹ probate or letters of administration.¹⁰ Jurisdiction of District Judge.

If the testator did not dwell or did not leave assets within the limits of the Province a High Court has no jurisdiction.¹¹ High Court.

The District Judge has power to grant letters of administration or probate in respect of persons of every race or nationality,¹² and whenever¹³ or wherever¹⁴ the will was executed.

The High Court at a Presidency town can grant probate or letters of administration to the Administrator-General.¹⁵

As to the right of the Administrator-General to letters of administration, see Act III of 1918, ss. 7-10, 18. Administrator-General.

¹ Act V of 1881, ss. 2, 154.

² *Ibid.* s. 1.

³ Reg. III of 1872, s. 3.

⁴ Act XIII of 1898, s. 4, Sch. I.

⁵ Reg. I of 1890, s. 3.

⁶ Act V of 1881, s. 2. Practically this means that the Act applies to all persons.

⁷ *I.e.* the Judge of a principal Civil Court of original jurisdiction. Acts V of 1881, s. 3; X of 1865, s. 3. This includes the High Court of Burma; cf. *Esoof Hashim Dooply v. Fatima Bibi* (1896), 24 Cal., 30; 1 C. W. N., 8. In Assam it means the Judicial Commissioner; cf. *Kristo Surma Adhikaree (Thakoor) v. Basodeb Ghoshamee* (1869), 12 W. R. C. R., 424.

⁸ *I.e.* property in the possession of the deceased at the time of his death or claimed as being his; see *Run Bahadoor Singh v. Rajrup Koer*

(*Maharanees*) (1879), 4 O. L. R., 498. In the case of joint family property which passes by survivorship this does not apply: *Kali Kumar v. Nunabati Kumari (Musti)* [1922 Pat.], 240.

⁹ *In the matter of Hurro Lall Shaha* (1882), 8 Cal., 570; 10 O. L. R., 409.

¹⁰ Acts X of 1865, ss. 240, 244; V of 1881, ss. 56, 62.

¹¹ *In the matter of Learmouth* (1900), 24 Mad., 120.

¹² See *Fardunji Aspandtarji v. Navajbai* (1892), 17 Bom., 689.

¹³ See *Krishna Kinkur Roy v. Rai Mohun Roy* (1886), 14 Cal., 87.

¹⁴ *Ravji Ranchod Naik v. Vishnu Ranchod Naik* (1884), 9 Bom., 241; *Bhaurao Dadajirao v. Lakshmi Bai* (1895), 20 Bom., 607.

¹⁵ Act III of 1913, s. 6.

Except in cases to which the Hindu Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, and the territories for the time being administered by the Governor of Burma,¹ and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorised it so to do.²

Courts
authorised to
receive
applications.

A list of the Courts, which have been authorised to receive applications for probate and letters of administration under this provision is to be found in the "Unrepealed General Acts," edn. 4, vol. III. p. 81. It practically includes all the High Courts and District Courts.

In Bombay a probate matter can be tried in the first instance by an Assistant Judge.³

As to the transfer of proceedings under these Acts to Subordinate Judges and Munsifs in the Provinces of Bengal, Agra, Bihar, Orissa, and Assam, see *ante*, p. 118.

Disposal of
application
made to Judge
of District in
which deceased
had no fixed
abode.

When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.⁴

This discretion does not extend to a case where there is no Court of concurrent jurisdiction in India to which application for probate can be made.⁵

District
Judge's powers
as to grant of
probate and
administration.

The District Judge has the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil proceeding depending in his Court.⁶

Power to
appoint
delegate of
District Judge.

The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters

¹ Act XIII of 1898, s. 15.

² Act V of 1881, s. 2, as amended by Act XXXVIII of 1920, Sch. 1.

³ Act XIV of 1869; Bom. Act I of 1900; *Lazmi v. Ada* (1908), 32 Bom., 634; 10 Bom. L. R., 924.

⁴ Act V of 1881, s. 57; Act X of 1865, s. 241.

⁵ *Bhaurao Dadajirao v. Lakshmi Bai* (1895), 20 Bom., 607.

⁶ Acts V of 1881, s. 53; X of 1865, s. 236.

of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter,¹ such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called District Delegates.²

* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.³

Probate and letters of administration may be granted by Delegate.

A District Judge can refer a case to a District Delegate for inquiry and report.⁴

The jurisdiction of a delegate to grant probate and letters of administration depends upon whether the deceased at the time of his death resided within the jurisdiction of such delegate.⁵

Probate or letters of administration shall have effect over all the property, movable or immovable, of the deceased, throughout the Province in which the same is or are granted.⁶

Conclusiveness of probate or letters of administration.

And it shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him.

And shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had no fixed place of abode situate

Effect of unlimited probates granted by certain Courts.

¹ I.e. the highest Court of Civil Appeal: Acts X of 1865, s. 3 ; X of 1897, s. 3 (24).

² Acts V of 1881, s. 52 ; X of 1865, s. 235A, added by Act VI of 1881, s. 2.

³ Act V of 1881, s. 58 ; Act X of 1865, s. 241A, added by Act VI of 1881, s. 3.

⁴ *Kunja Lal Chowdhury v. Kailash Chandra Chowdhury* (1910), 14 C.W.N., 1058, at p. 1070.

⁵ Act X of 1865, s. 244 ; V of 1881, s. 62.

⁶ See *Kishorbai Revadas v. Ran-chodia Dhulia* (1914), 38 Bom., 427 ; 16 Bom. L. R., 459.

within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have a like effect throughout the whole of British India.¹

As to the effect of probate or letters of administration granted to an Administrator-General, see Act XIII of 1913, s. 24.

District Delegate when not to grant probate or administration.

A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.²

Power to transmit statement to District Judge in doubtful cases where no contention.

In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.³

Power to refuse letters of administration.

Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies,⁴ be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.⁵

The effect of this provision apparently is that, in cases to which the Hindu Wills Act applies, the Court must grant letters of administration with the will annexed to the person who under the Probate and Adminis-

¹ Acts V of 1881, s. 59; X of 1865, s. 242; XIII of 1875, s. 2; VIII of 1903, s. 3.

² Acts V of 1881, s. 78; IX of 1865, s. 253A; VI of 1881, s. 7.

³ Acts V of 1881, s. 7; X of 1865, s. 253B; VI of 1881, s. 7.

⁴ Act XXI of 1870, s. 2, *ante*, p. 388.

⁵ Act V. of 1881, s. 85.

tration Act¹ shows himself entitled thereto; but where the will is not governed by the Hindu Wills Act, the Court can refuse to grant letters.

Every order made by a District Judge or District Delegate Appeals. by virtue of the powers conferred upon him by the Indian Succession Act, 1865, or by the Probate and Administration Act, 1881,² is subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.³

It has been held that there is an appeal from the following orders:

- (a) any order granting or refusing probate or letters of administration;⁴
- (b) an order under section 90 of the Probate and Administration Act, 1881, granting permission to dispose of immovable property;⁵
- (c) an order on an application for revocation of probate;⁶
- (d) an order admitting a person as caveator.⁷

It has been held that there is no appeal in the following cases, but in some of the cases it may be possible to set aside an order on revision:⁸

- (a) from an order refusing to admit a person as caveator;⁹
- (b) from an order as to the sufficiency of security;¹⁰
- (c) from an order directing "that the case be reopened, that probate be suspended" for a time certain, "and that the executor bring in his evidence to prove his right to obtain probate;"¹¹
- (d) from an order assigning an administration bond;¹²
- (e) from an order as to security;¹³
- (f) from an order refusing to amend a clerical error in a grant of probate.¹⁴

In Bombay there is no appeal to the District Judge from a decision of the Assistant Judge.¹⁵

¹ Sections 18-21.

² I.e. by the whole of those Acts, see *Umacharan Das v. Muktakeshi Dasi* (1900), 28 Cal., 149; 5 C. W. N., 443.

³ Acts X of 1865, s. 263; V of 1881, s. 86; Act V of 1908, Part VIII; ante, chap. xxviii.

⁴ *Mounistephens v. Orme* (1913), 35 All., 448.

⁵ *Umacharan Das v. Muktakeshi Dasi* (1900), 28 Cal., 149; 5 C. W. N., 443; *Sarat Chandra Pal v. Benode Kumari Dassi* (1915), 20 C. W. N., 28.

⁶ *Asim (Sheikh) v. Chandra Nath Namdas* (1904), 8 C. W. N., 748.

⁷ *Abhiram Dass v. Gopal Dass* (1889), 17 Cal., 48.

⁸ *Khettramoni Dasi v. Shyama*

Churn Kundu (1894), 21 Cal., 539.

⁹ *Ibid.*

¹⁰ *Lucas v. Lucas* (1891), 20 Cal., 245.

¹¹ *Brojonath Pal v. Dasmony Dasse* (1878), 2 C. L. R., 689. The order was treated as being in the nature of an order for review. Such an order might, under the present law (Act V of 1908, O. 47, rr. 7, 9), be appealable.

¹² *Kalimuddin v. Meharui* (1912), 39 Cal., 568.

¹³ *Lucas v. Lucas* (1891), 20 Cal., 245.

¹⁴ *Gerindra Kumar Das Gupta v. Rajeswari Roy* (1899), 27 Cal., 5.

¹⁵ *Laazmi v. Aba* (1908), 32 Bom., 684; 10 Bom. L. R., 924.

As to Letters-Patent appeals, see *ante*, pp. 50, 72, 78, 85, 90, 91.

As to appeals to His Majesty in Council, see *ante*, pp. 378, 379.

Concurrent jurisdiction of High Court.

The High Court¹ has concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.²

Removal of executor or administrator.

"The High Court may, on application made to it, suspend, remove, or discharge any private executor or administrator, and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate."³

Directions to executor or administrator.

Where probate or letters of administration in respect of any estate have been granted under the Indian Succession Act, 1865,⁴ or the Probate and Administration Act, 1881,⁵ the High Court⁶ may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate, or in regard to the administration thereof.

Power to dispose of property.

As to the power which the Court can give to an executor or administrator to dispose of property vested in him, see section 90 of the Probate and Administration Act, 1881, as substituted by Act VI of 1889, section 14.

Succession Certificates.

Succession certificates.

By the Succession Certificate Act (VII of 1889), the Court of the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or if at that time he had no fixed residence there, the Court within the jurisdiction of which any part of the property of the deceased may be found, may grant a certificate⁷ empowering the applicant

¹ That is to say the highest Court of Appeal in the particular part of British India: Acts X of 1897, s. 3 (24); X of 1865, s. 8. It includes both the appellate and original jurisdiction: *Nagendrabala Debi v. Kashipati Chowdhry* (1909), 37 Cal., 224; *In the goods of Mohendra Narain Roy* (1900), 5 C. W. N., 377.

² Acts V of 1881, s. 87; X of 1865, s. 264.

³ S. 264A, added to the Indian Succession Act, 1865, and s. 87A, added to the Probate and Adminis-

tration Act, 1881, by Act XVIII of 1919, Sch. I.

⁴ S. 264B, added to the Indian Succession Act, 1865, by Sch. I of Act XVIII of 1919.

⁵ S. 87B, added to the Probate and Administration Act, 1881, by Sch. I of Act XVIII of 1919.

⁶ A District Court cannot give directions: *Winsor v. Winsor* (1919), 22 Bom. L. R., 396.

⁷ Act VII of 1889, s. 5. As to the grant of a joint certificate, see *Ram Raj v. Brij Nath* (1913), 85 All., 470.

to collect specified debts and securities, and may¹ empower him :

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer,
- (c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them:

There is a difference of opinion as to whether a certificate can be given with respect to a portion only of a debt. The Allahabad High Court considers that it cannot be so given.² The High Court of Calcutta has taken a different view.³ It is submitted that the former view is preferable.

The Court also has power to revoke a certificate granted by it.⁴

An appeal lies to the High Court from an order of a District Court granting, refusing,⁵ or revoking a certificate under the Act.⁶

There is an appeal from an order for the issue of a certificate on security being given,⁷ but no appeal lies from an order that a certificate be not granted unless security be given.⁸

Such certificate has effect throughout British India.⁹

The Act applies to the whole of British India (inclusive of Upper Burma except the Shan States).¹⁰

The Act has been declared to be in force in British Baluchistan,¹¹ in the Angul District,¹² and in the Santhal Parganas.¹³

¹ Act VII of 1889, s. 8.

² *Sughra Begam v. Mahomed Mir* (1920), 48 All., 841, following *Ghafur Khan v. Kalandari Begam* (1910), 33 All., 327.

³ *Mohamed Abdul Hossain v. Sarifan* (1911), 16 C. W. N., 231; *Annapurna Dasee v. Nalini Mohun Das* (1914), 42 Calc., 10; 18 C. W. N., 886.

⁴ Act VII of 1889, s. 18. *Sukhia Bewa v. Secretary of State* (1914), 19 C. W. N., 554.

⁵ *Sharifunnissa Bibi v. Masum Ali* (1920), 42 All., 347.

⁶ Act VII of 1889, s. 19. This does not include an order extending a certificate under section 10 of the Act: *Venkateswarulu v. Brahmara-vulu Raja Kristnaji* (1901), 25 Mad.,

634.

⁷ *Ariya Pillai v. Thangammal* (1896), 20 Mad., 442; *Radha Rani Dassi v. Brindabun Chunder Basack* (1897), 25 Calc., 320; *contrá*, *Bhagwani v. Manni Lal* (1891), 13 All., 214; *Devkore (Bai) v. Lalchand Jivandas* (1894), 19 Bom., 790.

⁸ *Alta Soondari Dasi v. Srinath Saha* (1898), 20 Cal., 641; *Rama Reddi v. Papi Reddi* (1895), 19 Mad., 199; *Nandkore (Bai) v. Sha Maganlal* (1911), 36 Bom. 272; 13 Bom. L. R., 1208.

⁹ Acts VII of 1889, s. 15; XIII of 1898, s. 4, Sch. I.

¹⁰ Act VII of 1889, s. 1 (3).

¹¹ Reg. I of 1890, s. 3.

¹² Reg. III of 1913, s. 75.

¹³ Reg. III of 1872, s. 3, Sch.

Investiture of
inferior Courts
with
jurisdiction.

The Local Government may invest any Court inferior in grade to a District Court,¹ or any class of such Courts,² with the functions of a District Court under the Act, and may cancel or vary any such notification.³

Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by the Act upon the District Court, and the provisions of the Act relating to the District Court apply to such an inferior Court as if it were a District Court.

Provided that an appeal from any such order of an inferior Court, as is mentioned above, lies to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as is authorised to the High Court to make⁴ on an appeal from an order of a District Court.⁵

As to the cases in which an appeal lies, see *ante*, p. 895.

An order of a District Court on such appeal is, subject to the provisions of the Civil Procedure Code as to reference, revision, and review,⁶ final.⁷

The District Court may withdraw any proceedings under the Act from an inferior Court, and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.⁸

Administrator-
General.

The High Court can give the Administrator-General directions regard-
ing the administration of the estate.⁹

Property Protection.

Disputes as to
succession.

In case of disputes as to the succession¹⁰ to property, the Succession (Property Protection) Act (XIX of 1841) gives

¹ Any Civil Court which for any of the purposes of any enactment is subordinate to or subject to the control of a District Court is for the purpose of this provision deemed to be a Court inferior in grade to a District Court: Act VII of 1889, s. 26 (6).

² Act VII of 1889, s. 26 (5).

³ *Ibid.* s. 26 (1).

⁴ *Ante*, pp. 894, 895.

⁵ Act VII of 1889, s. 26 (2).

⁶ Act V of 1908, Part VIII.

⁷ Act VII of 1889, s. 26 (3).

⁸ *Ibid.* s. 26 (4).

⁹ Act III of 1913, s. 28.

¹⁰ This does not include the case of survivorship in a family governed by the Mitakshara school of law: *Sato Koer v. Gopal Sahu* (1907), 34 Cal., 929; 12 C. W. N., 65.

to a District Judge power to determine summarily the right to possession, and to appoint curators pending such inquiry. Safety of assets.

His order is not subject to appeal.¹

This Act has been extended to Sindh by Bombay Act XII of 1866, s. 12.

In cases governed by the Indian Succession Act, until probate be granted of the will of a deceased person, or an administration of his estate be constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.² Protection of property.

When any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Courts of Bengal, Madras or Bombay,³ and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession of such assets, or that danger is to be apprehended of misappropriation, deterioration, or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator-General is entitled to letters of administration, the Court may direct the Administrator-General to collect and hold such assets until the right of succession⁴ or administration is determined.⁵ Collection of assets by the Administrator-General.

There are also certain local Regulations dealing with the administration of estates. Local regulations.

The Bengal Wills and Intestacy Regulation, 1799,⁶ provides that where the right of succession to the estate of a deceased person, subject to the jurisdiction of a District Court, is disputed between several claimants, one of whom may have taken possession, the District Judge, on a regular suit Bengal, Agra, Bihar, and Orissa.

¹ *Jusoda Koonwar v. Gowree Byjnath Pershad* (1866), 1 Ind. Jur., 365; 6 W. R. M. A., 53; *Gajadhar v. Megha* (1922), 44 All., 546.

² Act X of 1865, s. 289.

³ *Ante*, pp. 887, 888.

⁴ Testate or intestate: *In the goods of Pasupati Mukerjee* (1919), 24 C. W. N., 826.

⁵ Act III of 1913, s. 11 (1).

⁶ Reg. V of 1799.

being preferred by the party out of possession, may require security from the person in possession.¹

Application.

This Regulation applies to the former Province of Bengal except as regards the scheduled districts.²

It applies to West Jalpaiguri.³ It is barred in the Chittagong Hill-tracts.⁴

Appointment of administrator.

In the event of such person being unable to give security, and in all cases wherein there may be no person authorised and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) shall require the Collector of land revenue of the district wherein the estate may be situated to appoint an administrator for the care and management of the estate.⁵

As to the power to authorise any Subordinate Judge or Munsif to take cognizance of proceedings under this Regulation, see Act XII of 1887, s. 28, *ante*, p. 113.

As to the duty of the District Courts, in the case of persons dying intestate, leaving personal⁶ property to which there is no claimant, see section 7 of this Regulation as amended by Acts I of 1908, Sch. II, Part I and IV of 1914, Sch., Part III.

Administration in Madras.

The Madras Administration of Estates Regulation, 1802 (Madras Regulation III of 1802, as amended by Madras Regulation V of 1829), which applies throughout the Presidency of Madras (except the Scheduled Districts),⁷ contains provisions similar to those enacted for Bengal.⁸

No appeal lies from an order made by a District Judge under section 16, clause 7, of this Regulation (adopting measures when there is no claimant).⁹

Bombay.

By the Bombay Administration of Estates Regulation, 1827 (Bombay Regulation VIII of 1827), which applies throughout the Presidency of Bombay, except the Scheduled Districts,¹⁰ and

¹ S. 4.

² Act XV of 1874, s. 6.

³ Bengal Code, ed. 1918, Vol I, p. 77.

⁴ Reg. I of 1900, s. 4 (2).

⁵ Reg. V of 1799, s. 5.

⁶ I.e. movable: *Shib Ram Lal v.*

Raj Coomar Mitter (1866), 6 W. R. C. R., 48.

⁷ Act XV of 1874, s. 4, Sch. II.

⁸ *Ante*, pp. 397, 398.

⁹ *Narasayya v. Collector of Anantapur* (1900), 24 Mad., 95.

¹⁰ Act XV of 1874, s. 5.

has been extended to Sindh,¹ if an heir, executor or administrator is desirous of having his right formally recognised by the Court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the District Judge, on application, shall issue a proclamation inviting all persons to appear and enter objections.²

The Judge is to investigate the case and grant or refuse a certificate of heirship, executorship, or administratorship.³

If the question at issue is of a complicated or difficult nature, the Judge may suspend proceedings until the question has been tried by a regular suit.⁴

An appeal lies from the order of a District Court refusing a certificate.⁵

Section 9 is as follows :—

“Whenever there is no person on the spot entitled and willing to take charge of the property of a person deceased, where the right of succession is disputed between two or more claimants, none of whom has taken possession, or where the heirs are incompetent to the management of their affairs from infancy, insanity or other disqualification, and have no near relations entitled and willing to take charge on their behalf, the Judge, within whose jurisdiction such property is, may appoint an administrator for the management thereof, Administrator. until the lawful heir, executor, or administrator appears, or the right of succession is determined, or the disqualification of the heir is removed, as the case may be, when the Judge, on being satisfied of the facts, shall direct the administrator in charge to deliver over the property to such person, with a full account of all receipts and disbursements during the period of his administration.”

When a person dies intestate and without known heirs the Heirs, etc., Judge, within whose jurisdiction the property is, shall appoint unknown. an administrator for the management thereof and shall issue a proclamation.⁶

¹ Bom. Act XII of 1866, s. 12.

² Bom. Reg. VIII of 1827, s. 2. As to the jurisdiction of a Subordinate Judge, see *Pitambar Mancharam v. Ishwar Jaduram* (1892), 17 Bom., 280.

³ Bom. Reg. VIII of 1827, ss. 3,

⁴ (1).

⁵ *Ibid.* s. 4 (2).

⁶ *Javermal v. Nasir, Poona* (1893), 18 Bom., 748; *Rangubai v. Abaji* (1894), 19 Bom., 399.

⁷ Bom. Reg. VIII of 1827, s. 10 (1).

If the heir appears he is to be put into possession.¹ If no heir appears and establishes his right, a reference is to be made to the High Court, who will grant time or order a sale and the proceeds to be deposited.²

Sealing in
United
Kingdom.

As to the sealing in the United Kingdom of Indian probates and letters of administration, and of probates or letters of administration granted by British Courts in foreign countries, see 55, 56 Vict. c. 6 ; 3, 4 Geo. V. c. 16.

¹ Bom. Reg. VIII of 1827, s. 10 (3).

² *Ibid.* s. 10 (4).

CHAPTER XXXII.

GUARDIANSHIP OF MINORS.

WE have already seen that the High Courts at Calcutta,¹ Madras,² Bombay,³ Allahabad,⁴ Patna,⁵ Lahore,⁶ and Rangoon,⁷ have by their Letters-Patent jurisdiction with regard to the persons and estates of infants.

The appointment and removal of guardians of the persons and property of minors and the regulation of their relations with their wards are also dealt with by the Guardians and Wards Act, 1890 (VIII of 1890).

Except in a suit a District Judge can only exercise powers expressly given by the Act.⁸ In matters which are provided for by the Act no suit lies.⁹

By that Act power is given to the District Court, that is, the principal Civil Court in each district, including in the case of the towns of Calcutta, Madras, and Bombay, the High Court in the exercise of its ordinary original civil jurisdiction,¹⁰ to appoint guardians.

As to the guardianship of Hindu children whose mother has re-married, see Act XV of 1856, s. 8.

The Guardians and Wards Act does not give to the District Court any power or authority over persons other than the guardian or the minor except in so far as it deals with the question as to who is the proper person to be appointed guardian, or whether a particular guardian should be removed or not, and as to restoring the ward to the custody of the guardian.¹¹

Ante, p. 57.

Ibid.

Ibid.

Ante, p. 72.

Ante, p. 79.

Ante, p. 86.

Ante, p. 91.

Achut Lal Jekisandas v. Chi-

manlal Parbhudas (1916), 40 Bom., 600; 18 Bom. L. R., 582.

⁸ *Utma Kuar v. Bhagwanta Kuar* (1915), 37 All., 515.

¹⁰ Act VIII of 1890, s. 4 (4).

¹¹ *Somakha v. Ramiah* (1911), 36 Mad., 39.

If the application is with respect to the guardianship of the person of the minor, it must be made to the District Court having jurisdiction in the place where the minor ordinarily resides.¹

To what Court application to be made.

If the application is with respect to the guardianship of the property of the minor, it must² be made either to the District Court having jurisdiction in the place where the minor ordinarily resides,³ or to a District Court having jurisdiction in a place where he has property.⁴

The place of domicile of the minor is immaterial.⁵

If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application, if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.⁶ Such order is appealable to the High Court.⁷

There is no objection to the Deputy Commissioner of the Santhal Parganas making the application, even though the application be to himself as District Judge.⁸

Minor out of British India.

A guardian of the person of a minor residing out of British India cannot be appointed, although it may be sometimes necessary to appoint a guardian of his property in British India.⁹

Simultaneous proceedings in different Courts.

If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings

¹ Act VIII of 1890, s. 9 (1). *Besant v. Narayaniah* (1914), 41 I. A., 314; 38 Mad., 807; 18 C. W. N., 1089; 16 Bom. L. R., 625. Should it happen that the minor has more than one residence and does not reside in one more than in another, then the application can be made to the Court of the district in which either of such residences is situate; but it is more convenient and proper that the application should be made to the Court of the district in which is situate that one of these residences which the minor is actually inhabiting at the time of the application, as it will be then easier for the Court to exercise its duty of appointing a guardian of the minor's person.

² Act VIII of 1890, s. 9 (2).

³ See above, note 1.

⁴ I.e. property of which a guardian can be appointed under the Act (see *post*, p. 408). As to a minor's share in joint family property, see Trevelyan on Law of Minors, 5th edn., pp. 95, 96. An order made by a District Court having jurisdiction would apply also to property of the minor outside the limits of the jurisdiction of that Court.

⁵ *Ward v. Velchand Umedchand* (1909), 34 Bom., 121; 11 Bom. L. R., 1137.

⁶ Act VIII of 1890, s. 9 (8).

⁷ *Ibid.*, s. 47.

⁸ *Keshobati Kumari v. Satya Narain Singh* (1907), 34 Calc., 569.

⁹ *Cf. Maganbhai v. Vithoba* (1870). 7 Bom. H. C. A. C. J., 7.

in the other Court or Courts, stay the proceedings before itself. If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court,¹ and the High Court shall determine in which of the Courts the proceedings shall be had. In any other case the Courts shall report the case through the Local Government to the Governor-General in Council, and the Governor-General in Council shall determine in which of the Courts the proceedings shall be had.²

As to the power of the Court to appoint a guardian, see Appointment of guardian.
Act VIII of 1890, s. 7.

The Court cannot³ appoint or declare a guardian of the Guardian not to be appointed by the Court in certain cases.
property of a minor whose property is under the superintendence of a Court of Wards, or appoint or declare a guardian of the person—

- (a) of a minor who is a married female and whose husband is not in the opinion of the Court unfit to be guardian of her person, or
- (b) subject to the provisions of the Act with respect to European British subjects,⁴ of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor,⁵ or
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

The Court cannot⁶ appoint another person guardian in the place of a guardian who has been appointed by will or Where testamentary guardian or guardians appointed by Court.
other instrument, or who has been appointed or declared by the Court, unless such guardian is dead or has been removed by the Court for any of the causes mentioned in section 39 of the Act,⁷ or has been discharged by the Court at his own request.⁸

In Bengal, whenever a Civil Court is satisfied that an Charge made over to Court

¹ This report is a ministerial act, and not a judicial reference: *In the matter of Fakaruddin Mahomed Chowdhry* (1898), 26 Calc., 133; 3 C. W. N., 91.

² Act VIII of 1890, s. 14. This section does not apply to proceedings on the original side of a High Court: *In the matter of Fakaruddin Mahomed Chowdhry* (1898), 26 Calc., 133; 3

C. W. N., 91.

Act VIII of 1890, s. 19.

Ibid. s. 17.

Besant v. Narayaniah (1914), 41 I. A., 314; 38 Mad., 807; 18 C.W. N., 1089; 16 Bom. L. R., 625.

Act VIII of 1890, s. 7.

Post, p. 404.

See Act VIII of 1890, s. 40.

of Wards in
Bengal.

order should be made, appointing a guardian of the person or property of a minor or both, and whenever a Civil Court removes the guardian of a minor,¹ if the property of such minor consists in whole or in part, of land or any interest in land, the Civil Court may² apply to the Court of Wards to take charge of the person and property of such minor, but it is in the discretion of the Court of Wards to take charge of such person or property or to refuse to do so.³

Removal of
guardian.

For certain specific causes the District Court may remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument.⁴

There is also power to discharge a guardian,⁵ and to appoint a successor to a guardian who is dead, or who has been discharged or removed.⁶

Orders for
regulating
conduct of
proceedings of
guardians.
Marriage.

Section 43 gives to the Court power to regulate the conduct or proceedings of guardians and to enforce its orders.

The Court has no power to sanction the marriage of the minor in a case where proceedings for the appointment of a guardian are pending.⁷ As to the interference by the Court to restrain the marriage of a minor, see Trevelyan on the Law of Minors, 5th edn., p. 248.

Reports by
Collector and
Subordinate
Courts.

The Court may⁸ call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceedings under the Guardians and Wards Act, and treat the report as evidence.

For the purpose of preparing the report the Collector or the Judge of the subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the Code of Civil Procedure.⁹

Orders
appealable.

An appeal lies¹⁰ to the High Court from an order made by a District Court:

(a) appointing or declaring or refusing to appoint or declare a guardian;¹¹ or

¹ Act VIII of 1890, s. 39.

² Cf. *In the matter of Boovey* (1890), 4 Bom., 685.

³ Ben. Act IX of 1879, s. 10 as amended by Act IV of 1892, s. 8.

⁴ Act VIII of 1890, s. 39. See Trevelyan on the Law of Minors, 5th edn., chap. xii.

⁵ Act VIII of 1890, s. 40 (2).

⁶ *Ibid.*, s. 42.

⁷ *Lacminarayan v. Parvatibai* (1919), 44 Bom., 690; 22 Bom. L. R., 399.

⁸ Act VIII of 1890, s. 46 (1).

⁹ *Ibid.*, s. 46 (2).

¹⁰ Act VIII of 1890, s. 47.

¹¹ See *Ahmad Ali v. Raisunnessa* (1913), 17 C. W. N., 429.

- (b) returning an application ; or
- (c) making or refusing to make an order for the return of a ward to the custody of his guardian ; or
- (d) refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or
- (e) refusing permission to a guardian to do an act referred to in section 28, or section 29 ; or
- (f) defining, restricting, or extending the powers of a guardian ; or
- (g) removing a guardian ; or
- (h) refusing to discharge a guardian ; or
- (i) regulating the conduct or proceedings of a guardian, or settling a matter in difference between joint guardians, or enforcing the order ; or
- (j) imposing a penalty.

As to an appeal in a High Court itself from an order made by a single Judge, see *ante*, pp. 50, 72, 78, 85, 86, 90, 91.

There is no appeal from an order :

- (a) refusing remuneration to a guardian ;¹
- (b) refusing to remove a guardian ;²
- (c) discharging a guardian ;
- (d) refusing to assign an administration bond.³

As orders under the Guardians and Wards Act do not bear an appealable value, there is no further appeal as of right to His Majesty in Council.⁴

Except so far as a right of appeal is given or an order is liable to be set aside on revision,⁵ an order made under the Guardians and Wards Act is final, and cannot be contested by suit or otherwise.⁶

There is no appeal from an order granting or refusing leave under section 28 or 29 of the Act.⁷

- *Gangadhar B. Mule v. Shivlingrao Jagdevrao* (1899), 24 Bom., 95; 1 Bom. L. R., 547.

¹ *Mohima Chunder Biswas v. Tarini Sunker Ghose* (1892), 19 Cal., 487; *Pakhwant Dai v. Indra Narain Singh* (1895), 23 Cal., 201; *In re Harkha (Bai)* (1895), 20 Bom., 667; *Imtias-un-nissa v. Anwar-ul-lah* (1898), 20 All., 488; *Pran Bandhu Singh v. Brahmamayi Dasja* (1897), 1 O. W. N., 698.

² *Ganpat v. Anna* (1905), 30 Bom.,

164; 7 Bom. L. R., 803.

⁴ See *Pearce Dayes (Mussamut) v. Hurbuns Kooer* (1870), 14 W. R. C. R., 299; and see High Court Letters-Patent, 1865, cl. 89, *ante*, p. 67. Special leave to appeal can be given by the Privy Council; see *In the matter of Skinner* (1870), 18 M. I. A., 582.

⁵ *Ante*, p. 358.

⁶ Act VIII of 1890, s. 48.

⁷ *Lachmi Prasad v. Baldeo Dube* (1921), 44 All., 458.

CHAPTER XXXIII.

COLONIAL COURTS OF ADMIRALTY.

THE following provisions are contained in the Colonial Courts of Admiralty Act, 1890 (53, 54 Vict. c. 27).

See Merchant Shipping, *post*, chapter xlii.

“Section 2.—(1) Every Court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Colonial Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction,¹ shall be a Court of Admiralty with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such Court in reference to the jurisdiction conferred by this Act is in this Act referred to as a Colonial Court of Admiralty.

“(2) The jurisdiction of the Colonial Court of Admiralty, shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations.”

In the following actions the High Court of Admiralty in England has jurisdiction:²

- (1) possession and co-ownership of a vessel;
- (2) mortgage of a vessel;
- (3) bottomry and respondentia;
- (4) damage by collision;

¹ *I.e.* Civil jurisdiction unlimited as to the value of the subject-matter at issue or as to the amount which

may be claimed or recovered: s. 15.

² See Roscoe's "Admiralty Practice," 4th edn., Part I.

- (5) damage to cargo on the carrying ship;
- (6) salvage;
- (7) towage;
- (8) necessities;
- (9) wages, and master's disbursements;
- (10) forfeiture of ships;
- (11) removal of master;
- (12) illegal colours;
- (13) order of claims;
- (14) limitation of liability.

The High Court can entertain a suit for a collision between foreign ships on the High Seas outside British or Anglo-Indian waters.¹

"(3) Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression 'Colonial Court of Admiralty' were therein substituted for 'Vice-Admiralty Court' or for other expressions respectively referring to such Vice-Admiralty Courts or the Judge thereof, and the Colonial Court of Admiralty shall have jurisdiction accordingly :

"Provided as follows :

"(a) Any enactment in an Act of the Imperial Parliament referring to the Admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for England and Wales; and

"(b) A Colonial Court of Admiralty shall have under the Naval Prize Act, 1864,² and under the Slave Trade Act, 1878,³ and any enactment relating to prize or the slave trade, the jurisdiction thereby conferred on a Vice-Admiralty Court and not the jurisdiction thereby conferred exclusively on the High Court of Admiralty or the High Court of Justice; but, unless for the time being duly authorised, shall not by virtue of this Act exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to prize; "

As to offences and discipline, see section 2 (8) (c) and (d).

"(4) Where a Court in a British possession exercises in

¹ *Barbot v. "The Augusta"* (1873), 10 Bom. H. C., 110; "*The Garland*" v. "*The Dragoon*" (1868), 1 Hyde, 275.

² 27, 28 Vict., c. 25.

³ 36, 37 Vict., c. 88.

respect of matters arising outside the body of a county, or other like part of a British possession any jurisdiction exerciseable under this Act, that jurisdiction shall be deemed to be exercised under this Act, and not otherwise.

Power of
Colonial
Legislature.

"Section 3. The legislature of a British possession may by any Colonial law :

"(a) declare any Court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a Colonial Court of Admiralty, and provide for the exercise by such Court of its jurisdiction under this Act, and limit territorially or otherwise the extent of such jurisdiction ; and

"(b) confer upon any inferior or subordinate Court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit.

"Provided that any such Colonial law shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty."

Such Colonial law as is made in pursuance of this Act requires His Majesty's approval.¹

Local
Admiralty
appeal.

"Section 5. Subject to rules of Court under this Act, judgments of a Court in a British possession given or made in the exercise of the jurisdiction conferred on it by this Act, shall be subject to the like local appeal,² if any, as judgment of the Court in the exercise of its ordinary Civil jurisdiction,³ and the Court having cognizance of such appeal shall for the purpose thereof possess all the jurisdiction by this Act conferred upon a Colonial Court of Admiralty.

Appeal to the
King in
Council.

"Section 6.—(1) The appeal from a judgment of any Court in a British possession in the exercise of the jurisdiction conferred by this Act, either where there is as of right no local appeal, rehearing or review,⁴ or after a decision on local appeal, lies to His Majesty the King in Council.

"(2) Save as may be otherwise specially allowed in a particular case by His Majesty the King in Council, an appeal under this section shall not be allowed :

"(a) from any judgment not having the effect of a definitive judgment unless the Court appealed from has given leave for such appeal, nor

¹ S. 4.

² See *ante*, pp. 50, 72, 78, 85, 86,

³ This means an appeal to any 90, 91.

Court inferior to His Majesty in 5 S. 15.
Council: s. 15.

“(b) from any judgment unless the petition of appeal has been lodged within the time prescribed by rules, or if no time is prescribed within six months from the date of the judgment appealed against, or if leave to appeal has been given then from the date of such leave.

“(3) For the purpose of appeals under this Act, His Majesty the King in Council and the Judicial Committee of the Privy Council shall, subject to rules under this section, have all such powers for making and enforcing judgments, whether interlocutory or final, for punishing contempts, for requiring the payment of money into Court, or for any other purpose, as may be necessary, or as were possessed by the High Court of Delegates before the passing of the Act transferring the powers of such Court to His Majesty in Council, or as are for the time being possessed by the High Court in England, or by the Court appealed from in relation to the like matters as those forming the subject of appeals under this Act.

“(4) All orders of the King in Council, or the Judicial Committee of the Privy Council, for the purposes aforesaid or otherwise in relation to appeals under this Act, shall have full effect throughout His Majesty's dominions, and in all places where His Majesty has jurisdiction.

“(5) This section shall be in addition to and not in derogation of the authority of His Majesty in Council or the Judicial Committee of the Privy Council arising otherwise than under this Act, and all enactments relating to appeals to His Majesty in Council or to the powers of His Majesty in Council or the Judicial Committee of the Privy Council in relation to those appeals, whether for making rules and orders or otherwise, shall extend, save as otherwise directed by His Majesty in Council, to appeals to His Majesty in Council under this Act.”

“Section 9.—(1) It shall be lawful for His Majesty, by ^{Power to establish Vice-Admiralty Courts.} commission under the Great Seal, to empower the Admiralty to establish in any British possession any Vice-Admiralty Court or Courts.

“(2) Upon the establishment of a Vice-Admiralty Court in a British possession the Admiralty, by writing under their hands and the Seal of the office of Admiralty, in such form as the Admiralty may direct, may appoint a Judge, registrar, marshal, and other officers of the Court, and may cancel any

such appointment, and in addition to any other jurisdiction of such Court, may (subject to the limits imposed by this Act or the said commission from His Majesty) vest in such Court the whole or any part of the jurisdiction by or by virtue of this Act conferred upon any Courts of that British possession, and may vary or revoke such vesting, and while such vesting is in force the power of such last-mentioned Courts to exercise the jurisdiction so vested shall be suspended.

“Provided that :

“(a) nothing in this section shall authorise a Vice-Admiralty Court so established in India or in any British possession having a representative legislature, to exercise any jurisdiction, except for some purpose relating to prize, to His Majesty's Navy, to the slave trade, to the matters dealt with by the Foreign Enlistment Act, 1870,¹ . . . or to matters in which questions arise relating to treaties or conventions with foreign countries, or to international law ; and—

“(b) in the event of a vacancy in the office of Judge, registrar, marshal, or any other officer of any Vice-Admiralty Court in a British possession, the Governor of that possession may appoint a fit person to fill the vacancy until an appointment to the office is made by the Admiralty.

“(3) The provisions of this Act with respect to appeals to His Majesty in Council from Courts in British possessions in the exercise of the jurisdiction conferred by this Act shall apply to appeals from Vice-Admiralty Courts but the rules and orders made in relation to appeals from Vice-Admiralty Courts may differ from the rules made in relation to appeals from the said Courts in British possessions.

“(4) If His Majesty at any time by commission under the Great Seal so directs, the Admiralty shall by writing under their hands and the Seal of the office of Admiralty abolish a Vice-Admiralty Court established in any British possession under this section, and upon such abolition the jurisdiction of any Colonial Court of Admiralty in that possession which was previously suspended shall be revived.

“Nothing in this Act shall affect any power of appointing a vice-admiral in and for any British possession or any place therein ; and whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the

Appointment
of Vice-
Admiral.

¹ 38, 34 Vict. c. 90.

Governor of the possession shall be *ex-officio* Vice-Admiral thereof."

"Section 12. It shall be lawful for His Majesty the King in Council by order to direct that this Act shall, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, apply to any Court established by His Majesty for the exercise of jurisdiction in any place out of His Majesty's dominions which is named in the Order as if that Court were a Colonial Court of Admiralty, and to provide for carrying into effect such application."

Foreign jurisdiction Acts.

"Section 17. On the commencement of this Act in any British possession, but subject to the provisions of this Act, every Vice-Admiralty Court in that possession shall be abolished."

Abolition of Vice-Admiralty Courts.

The following are Colonial Courts of Admiralty, within the meaning of the Colonial Courts of Admiralty Act, 1890 (53, 54 Vict. c. 27):¹

Colonial Courts of Admiralty Act, 1890.

- (a) The High Courts of Bengal, Madras, and Bombay.
- (b) The High Court at Patna.²
- (c) The High Court at Rangoon.³
- (d) The Court of the Resident at Aden.
- (e) The District Court of Karachi.

By virtue of clauses 24 and 25 of its Letters-Patent the Patna High Court can exercise in Orissa a jurisdiction in Admiralty.

"The expressions 'Courts having Admiralty jurisdiction' and 'Admiralty Court,' and the expression 'Admiralty or Vice-Admiralty cause,' and other expressions referring to Admiralty or Vice-Admiralty Courts or causes, shall wherever such expression occurs in any enactment of the Governor-General in Council, or of a Governor in Council, or Lieutenant-Governor in Council, be deemed to include a Colonial Court of Admiralty and a Colonial Court of Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause respectively."⁴

Construction of Indian Acts referring to Admiralty and Vice-Admiralty Courts.

¹ Act XVI of 1891.

² See *ante*, pp. 79, 80.

³ Letters-Patent High Court of

Rangoon, cl. 30; *ante*, p. 92; Bur. Act XI of 1922, Sch. I.

⁴ Act XVI of 1891, s. 8.

Slave Trade.

Slave Trade.

The Slave Trade Act, 1873 (36, 37 Vict. c. 88), contains the following :

"Section 5. The High Court of Admiralty of England and Vice-Admiralty Court in His Majesty's dominions out of the United Kingdom, shall have jurisdiction to try and condemn or restore any vessel, slave, goods and effects alleged to be seized, detained, or forfeited, in pursuance of this Act, and on restoring the same to award such damages in respect of the visitation, seizure, and detention of such vessel, goods and effects, and of any person on board such vessel, and in respect of any act or thing done in relation to such visitation, seizure, or detention, or in respect of any such matter, and in any case to make such order as to costs as, subject to the provisions of this Act, and of any existing slave-trade treaty the Court may think just.

"Provided that nothing in this section shall give to any Court any jurisdiction inconsistent with any existing slave-trade treaty over a vessel which is shown to such Court to be the vessel of any foreign state, and which has not been engaged within British jurisdiction in the slave trade, but where any vessel of a foreign state is liable to be condemned by a British Slave Court, such Court shall have the same jurisdiction as if she were a British vessel.

"Each of the said Courts shall have the same jurisdiction in regard to any person, who has been seized, either at sea or on land, on the ground that he has or is suspected to have been detained as a slave, for the purpose of the slave trade, as the Court would have under this section if he had been so detained on board a vessel that was seized and brought in for adjudication."

Mixed Courts.

"Section 7. Where any existing slave-trade treaty contains provisions for the time being in force for the appointment of any mixed Court or Commission for deciding cases under such treaty, it shall be lawful for His Majesty from time to time to appoint such commissioners, judges, arbitrators, secretary, registrar, and other officers as are mentioned in such provisions.

"In case of the death, or sickness, or absence, either on leave or from any other lawful impediment, of any such

commissioner, judge, arbitrator, secretary, registrar or other officer, whether British or not, the vacancy shall be temporarily filled in manner provided by the treaty.

"Section 8. The regulations contained in any existing slave-trade treaty for the time being in force, with respect to any mixed Court or Commission, shall have effect as if they were enacted in this Act, and such Court or Commission shall have all necessary jurisdiction for the purpose of carrying into effect any treaty referring to them, and in particular shall have jurisdiction to try, condemn and restore British vessels seized in pursuance of such treaty on suspicion of being engaged in the slave trade, and shall, for the purpose of their jurisdiction, have the same powers as any Vice-Admiralty Court, in His Majesty's dominions has . . ."

Powers of mixed Courts.

Necessaries.

A High Court can entertain a suit for maritime necessities, unless at the time of the institution of the suit any owner or part-owner of the ship is domiciled in British India or Burma, and it is proved that he is so domiciled.¹

Necessaries.

Prize Courts.

The Naval Prize Act, 1864,² contains the following :

"Section 8. The High Court of Admiralty and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty jurisdiction in His Majesty's Dominions, for the time being authorised to take cognizance of and judicially proceed in matters of prize, shall be a prize Court within the meaning of the Act.

Naval Prize Court.

"Every such Court, other than the High Court of Admiralty, is comprised in the term Vice-Admiralty Prize Court, when hereafter used in this Act."

As to the jurisdiction of the High Courts in prize causes by virtue of their Letters-Patent, see *ante*, pp. 62, 80, 92.

"Section 4. The High Court of Admiralty shall have jurisdiction throughout His Majesty's dominions in a prize Court. The High Court of Admiralty as a prize Court shall

Jurisdiction of High Court of Admiralty.

¹ *Madras Steam Navigation Co. v. Shalimar Works* (1914), 42 Cal., 85. See *Hourah Docking Company v. the "Jean Louis"* (1864), 2 Hyde,

255. See 24 Vict. c. 10, s. 5; 53, 54 Vict. c. 27, s. 2 (3), *a*, and *ante*, p. 68.

² 27, 28 Vict. c. 25.

have power to enforce any order or decree of a Vice-Admiralty prize Court, and any order or decree of the Judicial Committee of the Privy Council in a prize appeal.

Appeal;
Judicial
Committee.

"Section 5. An appeal shall lie to His Majesty in Council from any order or decree of a prize Court, as of right in case of a final decree, and in other cases with the leave of the Court making the order or decree.

Jurisdiction of
Judicial
Committee.

"Section 6. The Judicial Committee of the Privy Council shall have jurisdiction to hear and report on any such appeal, and may therein exercise all such powers as for the time being appertain to them in respect of appeals from any Court of Admiralty jurisdiction, and all such powers as are under this Act vested in the High Court of Admiralty, and all such powers as were wont to be exercised by the Commissioners of Appeal in prize causes."

Enforcement
of orders.

"Section 9. Every Vice-Admiralty prize Court shall enforce within its jurisdiction all orders and decrees of the Judicial Committee in prize appeals, and of the High Court of Admiralty in prize causes."

By the Prize Courts Act, 1894: ¹

Constitution of
Prize Courts.

"Section 2.—(1) Any commission, warrant or instructions from His Majesty the King or the Admiralty, for the purpose of commissioning or regulating the procedure of a prize Court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the Court shall act only upon such proclamation as hereinafter mentioned being made in the possession.

"(2) Where any such commission, warrant or instructions have been issued, then, subject to instructions from His Majesty, the Vice-Admiral of such possession may, when satisfied by information from a Secretary of State or otherwise, that war has broken out between His Majesty and any foreign State, proclaim that war has so broken out, and thereupon the said commission, warrant and instructions shall take effect as if the same had been issued after the breaking out of such war, and such foreign State were named therein.

"(3) The said commission and warrant may authorise either a Vice-Admiralty Court or a Colonial Court of Admiralty, within the meaning of the Colonial Courts of Admiralty Act,

1890,¹ to act as a prize Court, and may establish a Vice-Admiralty Court for that purpose.

“(4) Any such commission, warrant or instructions may be revoked or altered from time to time.

“(5) A Court duly authorised to act as a prize Court during any war shall, after the conclusion of the war, continue so to act in relation to, and finally dispose of, all matters and things which arose during the war, including all penalties and forfeitures incurred during the war.”

Nothing in the Judicial Committee Act, 1833,² shall be held to *Prize causes*.
impeach or render void any treaty or engagement already entered into by or on behalf of His Majesty, or be taken to restrain His Majesty from acceding to any treaty with any foreign prince, potentate, or power, in which treaty it shall be stipulated that any person or persons other than the Judicial Committee shall hear and finally adjudicate appeals from His Majesty's Courts of Admiralty in causes of prize.³

In any Admiralty or Vice-Admiralty cause of salvage, *Assessors*,
towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and at the request of either party to such cause shall, summon two competent Assessors.⁴

¹ *Ante*, p. 406.

² 3, 4 Will. IV. c. 41; *ante*, p. 374.

³ *Ibid.* s. 81.

⁴ Act VII of 1890, s. 85.

CHAPTER XXXIV.

ALIENATION OF AGRICULTURAL LAND

Bundelkhand.

THE Bundelkhand Alienation Act¹ deals with alienation of agricultural land by members of agricultural tribes.

Pre-emption.

"Section 16A.²—(1) Without the previous sanction of the Collector, no person shall institute a suit or take any other proceeding in any Court to enforce a right of pre-emption in respect of any land unless :

"(a) the transferor is not a member of an agricultural tribe ; or

"(b) the person instituting the suit or taking the proceeding is either a member of the same agricultural tribe as the transferor, or is a member of an agricultural tribe and a resident of the district in which the land is situated.

"(2) The Collector shall inquire into the circumstances of the case, and shall have a discretion to grant or refuse the sanction by an order in writing."

As to the execution of a decree for rent against a member of an agricultural tribe, see section 17A added to U. P. Act II of 1908 by U. P. Act IV of 1915, section 9.

Bar to jurisdiction of Civil Court.

"Section 22.—(1) A Civil Court shall not have jurisdiction in any matter which the Local Government or a Revenue Officer is empowered by this Act to dispose of.

"(2) No Civil Court shall take cognizance of the manner in which the Local Government or any Revenue Officer exercises any power vested in it or in him by or under this Act."

¹ U. P. Act II of 1908. See *Gobind Rao v. Kamta Prasad* (1914), 36 All. 376.

² Added by U. P. Act IV of 1915, s. 8.

Punjab.

By the Punjab Alienation of Land Act, 1900 (Act XIII of 1900), section 21 (1), a Civil Court has no jurisdiction in any matter which the Local Government¹ or a Revenue Officer is empowered by this Act to dispose of. Jurisdiction of Civil Courts excluded.

(2) No Civil Court shall take cognizance of the manner in which the Local Government¹ or any Revenue Officer exercises any power vested in it or in him by or under this Act.

By section 21A (2),² when it appears to the Deputy Revision Commissioner that any Civil Court has passed a decree or order contrary to any of the provisions of this Act, the Deputy Commissioner may apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order, or in which an appeal could have been instituted at the time when the decree or order was passed or in any other case to the High Court. And when the Court finds that such decree or order is contrary to any of the provisions of this Act, it shall alter it so as to make it consistent with the Act.

By section 21A (3), when any such Appellate Court passes an order rejecting such application, the Deputy Commissioner may apply to the High Court for revision thereof.

¹ In the North-West Frontier Province read "Chief Commissioner," see Reg. VII of 1901, s. 6 (1) (b).

² Inserted for the Punjab by Punjab Act I of 1907, s. 9.

CHAPTER XXXV.

LIMITED COMPANIES AND SOCIETIES.

Indian Companies Act.

THE Indian Companies Act, 1913 (Act VII of 1913), contains the following :—

Jurisdiction of
Courts under
Indian Com-
panies Act,
1913.

“Section 3.—(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

“Provided that the Local Government may empower any District Court¹ to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

“(2) For the purposes of jurisdiction to wind up companies, the expression ‘registered office’ means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

“(3) Nothing in this provision invalidates a proceeding by reason of its being taken in a wrong Court.”

Powers of
Court.

“The powers of the Court under the Act are :

(a) to confirm an alteration of the memorandum of association,²

(b) to rectify the register of members,³

(There is an appeal from the decision of an issue framed under this power.⁴)

¹ I.e. The principal Civil Court of original jurisdiction in a district, but this does not include a High Court in the exercise of its ordinary original civil jurisdiction : Act VII of 1913, s. 2 (6).

² Act VII of 1913, ss. 12-16.

³ *Ibid.* ss. 38, 39.

⁴ *Ibid.* s. 38. See *Manilal v. Gordon Company* (1916), 18 Bom. L. R., 982.

- (c) to confirm the reduction of the share capital,¹
- (d) to call or direct the calling of a general meeting of the company,²
- (e) to rectify the register of mortgages,³
- (f) to wind up the company,⁴

(The High Court may refer the winding up to a District Court⁵ and may transfer the winding up from one District Court to another.⁶)

- (g) to appoint an official liquidator,⁷
- (h) to settle a list of contributories and to cause the assets to be collected and applied,⁸
- (i) to require the delivery of property,⁹
- (j) to order payment of debts by contributory,¹⁰
- (k) to make calls,¹¹
- (l) to exclude creditors not proving in time,¹²
- (m) to adjust the rights of contributories,¹³
- (n) to order costs,¹⁴
- (o) to dissolve the company,¹⁵
- (p) to summon persons suspected of having property of company,¹⁶
- (q) to order the public examination of directors, promoters, etc.,¹⁷
- (r) to cause the arrest of an absconding contributory."¹⁸

As to the enforcement of orders, see sections 199-201.

"Section 202. Rehearings of, and appeals from, any Appeals, etc. order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction."¹⁹

An appeal lies from (amongst other orders) an order under section 89 of the Act (dismissing an application to enter a name on the register).²⁰

¹ Act VII of 1913, ss. 55-61.

² *Ibid.* s. 76.

³ *Ibid.* s. 120.

⁴ *Ibid.* s. 162.

⁵ *Ibid.* s. 164.

⁶ *Ibid.* s. 165.

⁷ *Ibid.* s. 175.

⁸ *Ibid.* s. 184.

⁹ *Ibid.* s. 185.

¹⁰ *Ibid.* s. 186.

¹¹ *Ibid.* s. 187.

¹² Act VII of 1913, s. 191.

¹³ *Ibid.* s. 192.

¹⁴ *Ibid.* s. 193.

¹⁵ *Ibid.* s. 194.

¹⁶ *Ibid.* s. 195.

¹⁷ *Ibid.* s. 196.

¹⁸ *Ibid.* s. 197.

¹⁹ *Ibid.* s. 202.

²⁰ *Amrita Lal Ghose v. Shrish Chunder Chowdhry* (1899), 26 Calc. 944; 4 C. W. N., 101.

There is, it is submitted, no appeal from an order settling a list of contributories under the Act,¹ or from an order of inquiry under section 195 of the Act.²

Voluntary
winding up.

In a voluntary winding up the Court may :

- (a) appoint or remove a liquidator,³
- (b) determine the manner in which a vacancy in the office of liquidator is to be filled up,⁴
- (c) vary or confirm an arrangement with creditors,⁵
- (d) determine any question in the winding up or exercise a power which might be exercised if the company were being wound up by the Court,⁶
- (e) defer the date at which the dissolution of the company is to take effect,⁷
- (f) order the winding up to be subject to the supervision of the Court,⁸
- (g) appoint or remove liquidators in case of winding up subject to supervision,⁹
- (h) order the prosecution of a director, manager, officer, or member of the Company.¹⁰

A District Judge cannot stay execution proceedings in a case of a voluntary winding up.¹¹

Provident Insurance Societies.

Inquiry as to
solvency.

The Provident Insurance Societies Act, 1912,¹² contains the following :—

An order made by the Registrar for the payment of the expenses of an inquiry as to the solvency of the society shall be enforced by any Civil Court having local jurisdiction in the same manner as a decree of such Court.¹³

Appeals.

"Section 20.—(1) An appeal shall lie to the Court¹⁴ within thirty days :

- (a) from an order of the Registrar refusing to register a

¹ Cf. *Jamiyatrarn Himmatrarn v. Gujarat Trading Company* (1869), 6 Bom. H. C. A. C., 185.

² *Wall v. Howard* (1896), 18 All., 215.

³ Act VII of 1913, s. 207.

⁴ *Ibid.* s. 210 (3).

⁵ *Ibid.* s. 212 (2).

⁶ *Ibid.* s. 215 (3).

⁷ *Ibid.* s. 217 (4).

⁸ *Ibid.* s. 221.

⁹ *Ibid.* ss. 224, 226.

¹⁰ *Ibid.* s. 237.

¹¹ *Surajbhan v. Boot and Equipment Factory, Agra* (1916), 38 All., 407.

¹² Act V of 1912.

¹³ *Ibid.* s. 17 (5).

¹⁴ *Ibid.* s. 2 (1).

Provident Insurance Society or any rules or amendments of rules of such society ;

(b) from an order of the Registrar cancelling the registry of a society ;

(c) from an order made by a liquidator appointed under section 19.

“(2) Save as hereinbefore expressly provided orders made under this Act shall be final and conclusive.”

The word “Court” in this Act means the principal Civil “Court.” Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction.¹

Life Assurance.

The Indian Life Assurance Companies Act, 1912,² contains the following :—

The Court, that is the principal Civil Court of original jurisdiction in the district, including a High Court in the exercise of its ordinary original civil jurisdiction,³ can :

(a) sanction an arrangement to amalgamate two or more life assurance companies ;⁴

(b) order the winding up of such company in accordance with the Indian Companies Act, 1913 ;⁵

(c) order the winding up of subsidiary companies ;⁶

(d) reduce the amount of the contracts of the company upon such terms and subject to such conditions as it thinks just, in place of making a winding-up order.⁷

Co-operative Societies Act, 1912.

In the case of the liquidation of a society under the Co-operative Societies Act, 1912,⁸ where an appeal from an order made by a liquidator under section 42⁹ of the Act is provided for by the rules, it shall lie to the Court of the District Judge.¹⁰

“Section 42.—(5) Orders made under section 42 (winding up) shall, on application, be enforced as follows :

¹ Act V of 1912, s. 2 (1).

² Act VI of 1912.

³ *Ibid.* s. 2 (8).

⁴ *Ibid.* s. 20.

⁵ Act VII of 1913, *ante*, pp. 419; Act VI of 1912, s. 22.

⁶ Act VI of 1912, s. 28.

⁷ *Ibid.* s. 26.

⁸ Act II of 1912.

⁹ Winding up.

¹⁰ Act II of 1912, s. 42 (4).

- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

"Save in so far as was so provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under the Act." ¹

Societies Registration Act.

Dissolution of Society.

By the Societies Registration Act, 1860,² in the case of the dissolution of a society to which that Act applies, where there is a dispute arising among the governing body or members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate.³

"Section 20. The following societies may be registered under this Act:—Charitable societies, the military orphan funds or societies established in the several presidencies of India, societies established for the promotion of science, literature or the fine arts, for instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designing."

Religious Societies.

Religious societies.

The Religious Societies Act, 1880 (I of 1880), does not apply to any Hindus, Mahomedans or Buddhists or to any persons whom the Local Government may, from time to time, by notification in the local official Gazette, exclude from the operation of the Act.

There is a provision as to a reference to the Court in the case of dissolution,⁴ similar to that contained in section 18 of Act XXI of 1860.⁵

¹ Act II of 1912, s. 42 (6). See *Ganpat Ram Rao v. Krishnadas Padmanabh* (1919), 44 Bom., 582; 22 Bom. L. R., 732; *Mathura Prasad v. Sheobalak Ram* (1917), 40 All., 89.

² Act XXI of 1860.

³ *Ibid.* s. 18.

⁴ Act I of 1880, s. 6.

⁵ Above.

In the case of a dissolution, the Court can also determine to what other body of persons associated for the purpose of maintaining religious worship or to what other religious or charitable purpose the residue of the property after payment of its debts and liabilities should be given.¹

Application of
residue in case
of dissolution.

When any question arises in connection with the matters referred to in the Act, or otherwise, as to whether any person is a member of such religious society, or as to the validity of an appointment under the Act, any person interested in such question may apply to the High Court for its opinion, and such opinion shall be deemed to have the force of a declaratory decree.²

Reference to
High Court.

¹ Act I of 1880, s. 7.

² Act I of 1880, s. 9.

CHAPTER XXXVI.

INCOME TAX.

THE Indian Income Tax Act, 1922 (Act XI of 1922) contains the following :

Statement of
case by Com-
missioner to
High Court.

“Section 66.—(1) If in the course of any assessment¹ under this Act or any proceeding in connection therewith other than a proceeding under chapter viii (offences and penalties), a question of law arises, the Commissioner may, either on his own motion or on reference from any Income Tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

“(2) Within one month of the passing of an order under section 31 (hearing of appeal by Assistant Commissioner) or section 32 (appeal against order by Assistant Commissioner), the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order and the Commissioner shall within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court :

“Provided that, if, in exercise of his power of review under section 33, the Commissioner decides the question, the assessee may withdraw his application and, if he does so, the fee paid shall be refunded.

“(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the

¹ Cf. *In re Panalal Ganeshdas* (1921), 46 Bom., 707.

Commissioner to state the case and to refer it, and on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

“(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto, or alterations therein, as the Court may direct in that behalf.

“(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income Tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

“(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be at the discretion of the Court.”

CHAPTER XXXVII.

INSOLVENCY.

THE law as to Insolvency in British India is to be found in the Presidency Towns Insolvency Act, 1909,¹ and the Provincial Insolvency Act, 1920.² Powers are given by these Acts for the purpose of discovery of the insolvent's property,³ getting it in, and distributing it among his creditors.

Right to order. Provided that the conditions laid down in those enactments are complied with, a debtor is entitled as of right to an adjudication order upon his own petition,⁴ but where there exists a prior adjudication order, either in India or elsewhere, the Indian Insolvency Courts have a discretion in making an order.⁵

As to the power to set aside an adjudication order in case of pending proceedings in another Court, see Presidency Towns Insolvency Act (III of 1909), s. 22; Provincial Insolvency Act (V of 1920), s. 86.

Presidency Towns.

Presidency
Towns Insol-
vency Act,
1909.

The law as to Insolvency in the Presidency Towns and Rangoon is now to be found in the Presidency Towns Insolvency Act, 1909 (III of 1909). The High Courts of Bengal, Madras, and Bombay, and at Rangoon, have jurisdiction under that Act.⁶

"The Insolvency Court is a separate tribunal, not affected by the Act authorising the Letters-Patent, and will continue a separate Court, though, for the future, presided over by a Judge of the High Court."⁷

¹ Act III of 1909.

² Act V of 1920.

³ Act III of 1909, s. 86. *Re Seahase* (1917), 22 C. W. N., 835.

⁴ *Chatrapat Singh Dugar v. Kharag Singh Lachmiram* (1916), 44 I. A., 11; 44 Calc., 585; 21 C. W. N., 497; 19 Bom. L. R., 174.

⁵ *In the matter of Watson* (1904), 31 Calc., 761; 8 C. W. N., 553. Cf. Act V of 1920, s. 77, *post*, pp. 434, 435. See Act III of 1909, s. 17 (5).

⁶ Act III of 1909, s. 8.

⁷ Sir C. Wood's dispatch accompanying first Letters-Patent, clause 13.

The Act contains the following provisions:

"Section 4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice shall, from time to time, assign a Judge for that purpose. Jurisdiction to be exercised by a single Judge.

"Section 5. Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction. Exercise of jurisdiction in chambers.

"Section 6.—(1) The Chief Justice may, from time to time, direct that in any matter in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court. Delegation of powers to officers of Court.

"(2) The powers referred to in sub-section (1) are the following, namely:

"(a) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;

"(b) to hold the public examination of insolvents;

"(c) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;

"(d) to hear and determine any unopposed or *ex parte* application;¹

"(e) to examine any person summoned by the Court under section 35 (to give evidence as to the insolvent's property).¹

"(3) An officer appointed under this section shall not have power to commit for contempt of Court."

The Registrar cannot affect the interest of infants adversely by his decision.²

The High Court cannot transfer a petition pending before it under the Presidency Towns Insolvency Act to a District Court.³

"Section 7. Subject to the provisions of this Act, the Court shall have power to decide all questions of priorities, Power to decide all questions arising in insolvency.

¹ *Sukhlal Karnani (Rai Bahadur) v. Official Assignee* (1921), 25 C. W. N., 750.

² *In re Lalbihari Shah* (1920), 47

Cal., 721.

³ *Srinivasa Aiyangar v. Official Assignee of Madras* (1913), 38 Mad., 472.

and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case."

This includes a power to adjudicate on claims relating to immovable property situate outside the limits of the ordinary original civil jurisdiction of the High Court.¹

The power given by this section is discretionary,² but when an order has been made under it a suit does not lie to set aside such order.³

Appeals in
insolvency.

"Section 8.—(1) The Court may review, rescind, or vary any order made by it under its insolvency jurisdiction.

"(2) Orders in insolvency matters shall, at the instance of any person aggrieved,⁴ be subject to appeal as follows, namely:

"(a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge;

"(b) save as otherwise provided in clause (a) an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court."⁵

Power to
adjudicate.

"Section 10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

¹ Cf. *Abdul Khader v. Official Assignee* (1916), 40 Mad., 810.

² *Ibid.*

³ Cf. *Abdul Latheef v. Official Assignee* (1912), 40 Mad., 1178.

⁴ This is not limited to a decree holder: *Mahomed Haji Essack v. Abdool Rahiman (Sheik)* (1915), 40 Bom., 461; 17 Bom. L. R., 989.

⁵ This gives an appeal from a protection order: *Mahomed Haji Essack v. Abdool Rahiman (Sheik)* (1915), 40 Bom., 461; 17 Bom. L. R., 989. As to when appeals lie from orders made in exercise of the ordinary original civil jurisdiction, see *ante*, pp. 50, 90, 91.

"Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication."

As to what is an "act of insolvency," see sections 9, 10.

"Section 11. The Court shall not have jurisdiction to make an order of adjudication unless : Restrictions on jurisdiction.

"(a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction ; or

"(b) the debtor, within a year before the date of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court ; or

"(c) the debtor personally works for gain within these limits ; or

"(d) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits :

"Section 12.—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless— Conditions on which creditor may petition.

"(a) the debt¹ owing by the debtor to the creditor, or if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

"(b) the debt is a liquidated sum payable either immediately or at some certain future time, and

"(c) the act of insolvency² on which the petition is grounded has occurred within three months before the presentation of the petition."

"Section 14. A debtor shall not be entitled to present an insolvency petition unless— Conditions on which debtor may petition.

¹ "Debt" includes a judgment debt : Act III of 1909, s. 2 (6), and a certified debt recoverable under the Public Demands Recovery Act (Ben. Act I of 1895). Cf. *Kedar Bansi Lal*

Misser v. Janki Koeri (Maharani) (1909), 14 O. W. N., 143.

² As to what is an act of insolvency, see ss. 9, 10.

“(a) his debts amount to five hundred rupees, or

“(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

“(c) an order of attachment in execution of such a decree has been made and is subsisting against his property.”

Annulment of
adjudication.

Where, in the opinion of the Court, a debtor ought to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may,¹ on the application of any person interested, by order annul the adjudication.²

Appeal to
Court.

“Section 86.—(1) If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, revise, or modify the act or decision complained of, and make such order as it thinks just.”

Small estates.

There is power to order summary administration of small estates, *i.e.* where the property of the insolvent is not likely to exceed in value Rs.3,000 or such other less amount as may be prescribed. In that case no appeal lies from any order of the Court, except with leave of the Court.³

Deceased
insolvent.

There is power to order administration in insolvency of the estate of a deceased insolvent,⁴ but this does not apply to a case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General.⁵

Acts in aid of
another Court.

All British Courts⁶ having jurisdiction in bankruptcy or insolvency and the officers of those Courts are required to act in aid of, and be auxiliary to, each other in all matters of bankruptcy and an order of the Court seeking aid, with a request⁷ to another of such Courts is sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either the Court which made the request, or the Court to which the request is made could exercise with regard to similar matters within their respective jurisdictions.⁸

¹ *In re Subrati Jan Mahomed* (1912), 88 Bom., 200.

² S. 21 (1).

³ Act III of 1909, s. 106.

⁴ *Ibid.* s. 108. *In the goods of Mahan Lal Chatterjee* (1911), 15 C. W. N., 350.

⁵ *Ibid.* s. 111.

⁶ This includes Courts in British India. See Act III of 1909, s. 126.

⁷ To give jurisdiction there must be a request: *Re King and Co.* (1911), 38 Calc., 542.

⁸ 46, 47 Vict. c. 52, s. 118. As to the examination of witnesses, see *ibid.* s. 27. See Act III of 1909, s. 126.

There is no obligation on Courts outside British India to recognise an order of an Insolvent Court in British India. The Insolvent Court cannot therefore restrain a suit in a Court in a foreign State.¹

"Section 17. On the making of an order of adjudication the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceedings except with the leave of the Court and on such terms as the Court may impose.

Effect of order of adjudication.

"Provided that this section shall not affect the power of any secured creditor to deal with his security in the same manner as he would have been entitled to realise and deal with it if this section had not been passed."²

As to the discharge of the insolvent, see sections 88 to 45.

Provincial Insolvency.

In the Provinces a District Court, that is to say the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency towns and of the town of Rangoon,³ has insolvency jurisdiction under the Provincial Insolvency Act, 1920 (Act V of 1920).⁴

Insolvency in Provinces.

It has been held that Act III of 1907, the place of which was taken by the present Act, had no application to the rent of an occupancy holding.⁵

The Local Government may, by notification in the local official Gazette, invest any Court subordinate to a District Court (including a Court of Small Causes) with jurisdiction in any class of cases, and any Court so invested has within the local limits of its jurisdiction concurrent jurisdiction with the District Judge under the Act.⁶

Jurisdiction of Subordinate Courts.

Section 4 (1) is in terms similar to section 7 of Act III of 1909.⁷

Power to decide all questions arising in insolvency.

"Section 4.—(2) Subject to the provisions of the Act and notwithstanding anything contained in any other law for the

Power of Court to settle

¹ *Lakshmiram v. Poonamchand* (1920), 45 Bom., 550; 22 Bom. L. R., 1178.

² *In re Jewandas Jhawar* (1912), 40 Cal., 78.

³ Act V of 1920, s. 2 (b).

⁴ *Ibid.* s. 3 (1).

⁵ *Kalka Das v. Gajju Singh* (1921), 43 All., 510, overruling *Raghubir Singh v. Ram Chandar* (1911), 34 All., 121.

⁶ Act V of 1920, s. 3.

⁷ *Ante*, pp. 427, 428.

all questions
arising in
insolvency.

time being in force, every such decision is final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them."

As to the power to sell the debtor's interest in property without deciding any such questions, see section 4 (8).

General powers
of Courts.

"Section 5.—(1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.¹

"(2) Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits."

Petition and
adjudication.

Subject to the conditions specified in the Act,² if a debtor commits an act of insolvency,³ an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order adjudging him as insolvent.⁴

The members of a joint Hindu family can be adjudicated insolvents on a single petition by a creditor, if they are liable on a joint debt, and have been guilty of a joint act or acts of insolvency.⁵

Conditions.

The conditions under which a creditor may petition⁶ are similar to those in the case of a petition under section 12 (1) of the Presidency Towns Insolvency Act, 1909.⁷

The conditions under which a debtor may petition are similar⁸ to those in the case of a petition under section 14 of the Presidency Towns Insolvency Act, 1909,⁹ with the addition of the condition that the debtor is unable to pay his debts.

Court to which
petition shall
be presented.

"Section 12. Every insolvency petition shall be presented to a Court having jurisdiction under the Act in any local area in which the debtor ordinarily resides¹⁰ or carries on business¹¹ or personally works for gain,¹² or if he has been arrested or imprisoned where he is in custody:

"Provided that no objection as to the place of present-

¹ Cf. *Ram Sunder Rai v. Ram Dheyam Ram*, [1918 Pat.], 302.

² For the conditions, see ss. 9, 10.

³ As to what is an act of insolvency, see ss. 6, 7.

⁴ S. 7.

⁵ Cf. *Mamayya v. K. R. Rice Mill Company* (1921), 44 Mad., 810.

⁶ Act V of 1920, s. 9.

⁷ *Ante*, p. 429.

⁸ Act V of 1920, s. 10.

⁹ *Ante*, pp. 429, 430.

¹⁰ *Madho Pershad v. Walton* (1913), 18 C. W. N., 1050; cf. *ante*, p. 45.

¹¹ Cf. *ante*, p. 46.

¹² *Ibid*.

ment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice.”¹

As to interim proceedings against debtors, see Act V of 1920, s. 21.

As to the appointment and powers of Receivers, see sections 20, 56, 57, 58, 59.

“Section 68. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the Receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.”² Appeal against Receiver.

“Section 75.—(1) The debtor, any creditor, the Receiver or any other person aggrieved³ by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final: Appeals.

“Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court⁴ was according to the law, may call for the case and pass such order with respect thereto as it thinks fit: Second appeal.

“Provided, further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4⁵ may appeal to the High Court on any of the grounds mentioned in sub-section (1) of section 100⁶ of the Code of Civil Procedure (Act V of 1908).”

The District Judge has in appeal the same powers as an appellate Court under the Code of Civil Procedure.⁷

There is also an appeal to the High Court by a person aggrieved by the following decisions or orders of a District

¹ S. 12.

² Cf. *Sakhawat Ali v. Radha Mohan* (1918), 41 All., 248; *Chidambaram v. Nagappa* (1912), 38 Mad., 15; *post*, p. 484, n. 4.

³ Cf. *Sakhawat Ali v. Radha Mohan* (1918), 41 All., 248.

⁴ This includes an Additional Judge:

see *Emperor v. Chiranjil Lal* (1914), 36 All., 576; *Makhan Lal v. Sri Lal* (1912), 34 All., 892; *Mulchand v. Murari Lal* (1913), 36 All., 8.

⁵ *Ante*, p. 431.

⁶ *Ante*, pp. 342, 348.

⁷ *Munnu Lal v. Kunj Bihari Lal* (1922), 44 All., 605.

Court come to or made otherwise than in appeal from an order made by a subordinate Court :¹

Section 4. Decision of questions of title, priority, etc., arising in insolvency.

Section 25. Order dismissing a petition.²

Section 26. Order awarding compensation.

Section 27. Order of adjudication.

Section 33. Orders regarding entries in the schedule.

Section 35. Order annulling adjudication.

Section 37. Order declaring the conditions on which the debtor's property shall revert to him on annulment of adjudication.

Section 41. Order on application for discharge.

Section 50. Order disallowing or reducing entries in the schedule.

Section 53. Order annulling a voluntary transfer.

Section 54. Decision that a transfer of property is a preference in favour of a creditor.

Section 69. Conviction and sentence of debtor for an offence under this section.³

Any person aggrieved⁴ by any other order made by a District Court otherwise than in appeal from an order made by a Subordinate Court may appeal to the High Court by leave of the District Court or of the High Court.⁵

This Act does not interfere with any right of appeal to the Privy Council that may otherwise exist.⁶

Courts to be
auxiliary to
each other.

“Section 77. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of, and be auxiliary to, each other in all matters of insolvency, and an order of a Court seeking aid with a request

¹ S. 75 (2), Soh. I.

² Cf. *Chidambaram v. Nagappa* (1912), 38 Mad., 15. As to the powers of the High Court to protect the appellant, and to appoint a receiver pending an appeal, see *Abdul Razak v. Basiruddin Ahmed* (1910), 14 C. W. N., 586.

³ The appeal from an Additional District Judge lies to the High Court. It is a civil and not a criminal appeal : *Emperor v. Chiranjil Lal* (1914), 36 All. 576; *Makhan Lal v. Sri Lal* (1912), 84 All., 382.

⁴ Cf. *Sakhawat Ali v. Radha Mohan* (1918), 41 All., 248; *Jhabba Lal v. Shidcharan Das* (1916), 39 All., 152; *Ladu Ram v. Mahabir Prasad* (1916), 39 All., 171; *Gujar Shah v. Barkat Ali Shah* (1919), 1 Lahore, 213.

⁵ S. 75 (3). Cf. *Mulchand v. Murari Lal* (1918), 36 All., 8; *Madhu Sudan Pal v. Parbati Sundari Dasg* (1914), 19 C. W. N., 760.

⁶ *Chatrapat Singh Dugar v. Kharag Singh Lachmiram* (1918), 40 Calc., 685; 17 C. W. N., 752.

to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matter directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions."

By section 80 (1), with the previous sanction, in the case of the High Court of Bengal, of the Governor-General in Council, and in the case of any other High Court, of the Local Government, the High Court "may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the direction of the Court, have all or any of the following powers, namely :

Delegation of powers to Official Receiver.

- (a) to hear insolvency petitions, to examine the debtor and to make orders of adjudication ;
- (b) to frame schedules and to admit or reject proofs of creditors ;
- (c) to grant orders of discharge ;
- (d) to approve compositions or schemes of arrangement ;
- (e) to make *interim* orders in any case of urgency ;
- (f) to hear and determine any unopposed or *ex parte* application.

"(2) Subject to the appeal to the Court provided by section 68,¹ any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court."

"Section 81. Any Local Government with the previous sanction of the Governor-General in Council may, by notification in the local official Gazette, declare that any provisions of this Act specified in Schedule II shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act in any part of the territories administered by such Local Government."

Bar of application of certain provisions.

"Section 82. Nothing in this Act shall—

Savings.

- (a) affect the Presidency Towns Insolvency Act, 1909,² or
- (b) apply to cases in which chapter iv of the Dekkhan Agriculturists' Relief Act, 1879,³ is applicable."

As to the provisions that all British Courts having jurisdiction in bankruptcy or insolvency should act in aid of one another, see *ante*, p. 480.

As to the execution in India of warrants issued by Courts having jurisdiction in bankruptcy, see 46, 47 Vict. c. 52, s. 119.

¹ *Ante*, p. 433.

² Act XVII of 1879, *ante*, p. 157.

³ Act III of 1909, *ante*, pp. 426-431.

CHAPTER XXXVIII.

IRRIGATION AND CANALS.

Irrigation.
Ajmere.

By the Ajmere Irrigation Regulation (VIII of 1887), s. 6 (1), a Civil Court may take cognizance of a suit to contest the title of the Government to the exclusive use and control of water to which section 5 of the Ajmere Land and Revenue Regulation, 1877 (II of 1877),¹ relates, and to which any provision of this Regulation or of any rule thereunder has been applied, but shall not in any such suit make a decree or order affecting the supply of water to any crop sown or growing at the time of the decree or order.

"Section 6. (2) Save as provided by sub-section (1), a Civil Court shall not take cognizance of any claim in respect of anything done in pursuance of this Regulation or of any rule thereunder."

Bengal Irrigation Act.

As to the settlement of disputes as to mutual rights and liabilities of persons interested in village channels, see Bengal Irrigation Act, 1876 (Bengal III of 1876), ss. 87-89.

Water rates.

All suits arising out of the power of distraint for water rates, or out of any acts done under colour of the exercise of the said power of distraint, or by persons in receipt of the water rates against any agents employed by them in the collection of such water rates, or the sureties of such agents for money received or for accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the same Court or authority as would have jurisdiction if such water rates were rent due for the land irrigated.²

¹ That section is as follows: "The Government shall be presumed, unless the contrary is proved, to be entitled to the exclusive use and control of the water of all rivers and streams flow-

ing in natural channels, and of all natural collections of water, and of all tanks constructed by the Government."

² Ben. Act III of 1876, s. 90.

As to an appeal under the Act to the Collector and supervision by the Commissioners and Board of Revenue, see section 91 of the Act.¹

Except where the Secretary of State is at the instance of the Collector made a party to a suit or proceeding in which an entry made under any Record-of-rights prepared or revised under Part X, which was added to the Bombay Irrigation Act,² 1879, by Bombay Act II of 1914, section 2, no suit lies against Government in respect of anything done by the Collector, Canal Officer, or any other person acting under the orders of Government in the exercise of any power by Part X of the Act conferred on such Collector, Canal Officer or other person or on Government.

A Canal Officer may by consent settle disputes as to mutual rights and liabilities of persons interested in a watercourse. Failing such consent he shall refer the matter to the Collector, whose order remains in force until set aside by a decree of a Civil Court.³

By section 67 of the Northern India Canal and Drainage Act, 1873 (Act VIII of 1873), which applies to the Sambalpur District, the Central Provinces, N.-W. Frontier Provinces, the Punjab, and the United Provinces, except where otherwise provided in the Act, all claims against Government in respect of anything done under the Act may be tried by the Civil Courts, but no such Court shall in any case pass an order as to the supply of canal water to any crop sown or growing at the time of such order.

There is a similar provision in the Burma Canal Act, 1905.⁴

As to Upper Burma, see Regulation III of 1889, s. 53 (2) (ix), *ante*, p. 178.

Section 68 of the Northern India Canal and Drainage Act, 1873,⁵ provides for the settlement of differences as to mutual rights and liabilities of persons interested in a watercourse by the Divisional Canal Officer. His order is final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and remains in force until set aside by the decree of a Civil Court.⁵

¹ There is a similar provision in the Bombay Presidency: Bom Act VII of 1879, s. 67.

² Bom. Act VII of 1879.

³ Bom. Act VII of 1879, s. 26.

⁴ Bur. Act II of 1905, s. 72.

⁵ Act VIII of 1873.

There is a similar provision in the Burma Canals Act, 1905.¹

Upper Burma

As to claims connected with a right in an irrigation work, see the Upper Burma Land and Revenue Regulation, 1889 (III of 1889), s. 53 (ix), *post*, p. 641.

Punjab Minor Canals.

The Punjab Minor Canals Act, 1905 (Punjab Act III of 1905), contains the following provisions :

During the period for which the Local Government has undertaken the collection of the water rates leviable in respect of a canal, no suit for the recovery of any such rates shall be instituted.²

Settlement of disputes

Section 43 provides for the settlement of disputes in regard to rights and liabilities in respect of ownership, construction, use or maintenance of a canal or watercourse by the Collector. If the dispute relates to a canal the Collector proceeds as a Revenue Court. If it relates to a watercourse he proceeds as a Revenue Officer, and his order, unless set aside on an appeal to the Commissioner, is final. The order of the Commissioner on appeal is final save in certain land acquisition proceedings.³ No Civil Court has jurisdiction in any matter which a Revenue Officer or Revenue Court is empowered by the Act to dispose of, or take cognizance of the manner in which the Local Government or any Revenue Officer or Revenue Court exercises any powers vested in it or him by, on, or under the Act.⁴

Suits against Government, etc.

"Section 67.—(1) In any suit or proceeding in which an entry made in any record prepared under section 28 or section 35 is directly or indirectly called in question, no Court shall before the final settlement of issues give notice of the suit or proceeding to the Collector, and, if moved to do so by the Collector, shall make the Secretary of State for India a party to the same.

"(2) Save as provided in sub-section (1) no suit shall lie against the Government in respect of anything done by the Collector or by any person acting under the orders of the Local Government, in the exercise of any power by this Act conferred on such Collector or Government."

By the Bihar and Orissa Private Irrigation Works Act, 1922, a person aggrieved by an order of the Collector under section 5 (Ordering repairs or construction) or section 30 (Inquiry), may

¹ Bur. Act II of 1905, s. 73.

² Punj. Act III of 1905, s. 40.

³ *Ibid.* s. 55.

⁴ *Ibid.* s. 60.

institute a suit in a Civil Court which would have jurisdiction to entertain a suit for the possession of any land affected by the order.¹

By the Bihar and Orissa Minor Irrigation Works Act, 1922, a person may sue to obtain a declaration in the Civil Court that he is not liable to such assessment on the ground that he is not the owner of the land in respect of which the assessment has been made.² That Act also deals with a Civil Suit in the case of a dispute between private persons.³

¹ B. & O. Act V of 1922, s. 47.

² *Ibid.* s. 83.

³ B. & O. Act VI of 1922, s. 22.

CHAPTER XXXIX.

LEGAL PRACTITIONERS.

Admission and
dismissal of
pleaders and
mukhtars.

A HIGH COURT¹ may make rules for the grant of certificates giving authority to practise as pleaders or mukhtars in Courts subordinate to it, and in the Revenue offices situate within the local limits of its appellate jurisdiction.² It may also suspend or dismiss such pleaders and mukhtars for specified reasons,³ and may reinstate them.⁴

They can be dismissed in respect of acts not done in a professional capacity.⁵

Suspension
pending
investigation.

By section 14 of the Legal Practitioners Act (Act XVIII of 1879) as amended by Act IX of 1884, "any District Judge, or with his sanction any Judge subordinate to him, any Judge of a Court of Small Causes of a Presidency town,⁶ any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or with the Collector's sanction any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section."⁷

As to the appointment, suspension, and dismissal of advocates, vakils, and attorneys of a Chartered High Court, see *ante*, pp. 86, 87, 72, 78, 85, 89.

A High Court not established by Royal Charter may admit, suspend or dismiss advocates.⁸

¹ This means the highest Civil Court of Appeal in the part of British India in which the Act operates Act X of 1897, s. 3 (24).

² Act XVIII of 1879, s. 7.

³ *Ibid.* ss. 12 and 18, as amended by Acts IX of 1884, s. 3, and XI of 1896, s. 2.

⁴ *In re Mathura Prasad* (1922).

¹ Pat., 684.

² *Shankar Ganesb Dabir v. Secretary of State* (1922), 49 I. A., 819; 49 Cal., 845.

³ Act IX of 1884, s. 4.

⁷ *In re Rabindrachandra Chatterjee* (1922), 49 Cal., 850.

⁸ As substituted for s. 41 of Act

CHAPTER XL.

LUNACY.

WE have seen¹ how the Chartered High Courts have by virtue of their Letters-Patent power to deal with the persons and estates of lunatics.

The Lunacy Act, 1912,² makes provisions for the care of Lunacy Act. the persons and estates of lunatics³ in British India.

Part II⁴ of the Act deals with the reception, care, and treatment of High Courts. lunatics, and does not affect the powers of the High Courts.⁵

It empowers the Magistrate⁶ within the local limits of whose jurisdiction the alleged lunatic resides to make an order for the reception "into an asylum or mental hospital"⁷ of a lunatic other than a lunatic so found by inquisition."⁸

The following section has been added to the Indian Lunacy Act, 1912, by the Indian Lunacy (Amendment) Act, 1916:⁹

"Section 11A.—(1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in British India, the Governor-General in Council may, by notification in the Gazette of India, direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the Province or Provinces within which such reception orders may be made."

Reception
orders.

Reception
order in case of
lunatics from
foreign State
in India.

¹ *Ante*, pp. 57, 72, 79, 86, 91.

² Act IV of 1912.

³ *I.e.* idiots or persons of unsound mind: s. 3 (5).

⁴ Ss. 4-36.

⁵ S. 2.

⁶ That is a Presidency Magistrate, District Magistrate, Sub-Divisional

Magistrate, or Magistrate of the first class specially empowered by the Local Government to perform the functions of a Magistrate under the Act: s. 3 (6).

⁷ Act VI of 1922, s. 2.

⁸ Ss. 4, 10.

⁹ Act XII of 1916, s. 2.

With certain modifications the provisions of the Indian Lunacy Act as to the making of reception orders on petition and for temporary detention in suitable custody apply to such lunatics.¹ The functions of the Magistrate shall be performed by such officer as the Local Government may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of such provisions.²

Restrictions as to asylums.

Except by a general or special order of the Governor-General in Council no Magistrate can make a reception order for the admission of any lunatic into any asylum established by Government outside the Province in which the Magistrate exercises jurisdiction.³

Maintenance.

When a lunatic in or outside a Presidency town has been so found by inquisition the High Court or the District Court,⁴ as the case may be, may order maintenance out of the lunatic's estate or from a person legally bound to maintain him.⁵

Judicial Inquisitions in Presidency Towns.

Jurisdiction in Presidency Towns to order inquisition.

The High Courts of Judicature at Calcutta, Madras, and Bombay,⁶ can direct an inquisition whether the person subject to the jurisdiction of the Court,⁷ who is alleged to be a lunatic, is of unsound mind and incapable of managing himself and his affairs,⁸ and concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind or such other matters as to the Court may seem proper.⁹

Application by whom to be made.

Application for such inquisition may be made by any relative¹⁰ of the alleged lunatic, or by the Advocate-General.¹¹

Power to direct District Court to make inquisition.

"Section 43.—(1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner provided in the

¹ S. 11A (2).

² *Ibid.* (2), (b).

³ Act IV. of 1912, s. 22.

⁴ *Post*, pp. 443, 444, 445.

⁵ Act IV of 1912, s. 26.

⁶ *Ibid.* s. 37.

⁷ See *ante*, p. 441.

⁸ Act IV of 1912, s. 38 (1).

⁹ *Ibid.* s. 38 (2).

¹⁰ This includes the brother of the wife of the alleged lunatic; *Mani Lal Sil v. Nepal Chandra Pal* (1917), 22 C. W. N., 547.

¹¹ Act IV of 1912, s. 39.

Act, the Court may direct the inquisition to be made before the District Court¹ within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding to the Court directing the inquisition."²

"Section 46. The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates."

Custody of lunatic and management of estate.

"Section 49. The Court may, if it appears to be just or for the lunatic's benefit, order that any property, movable or immovable, of the lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or repaying, with or without interest, money to be applied or which has been applied to all or any of the following purposes, namely:

Disposal of property.

- (1) the payment of the lunatic's debts or engagements;
- (2) the discharge of any incumbrance on his property;
- (3) the payment of any debts or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;

(4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;

(5) the payment of the costs of any inquiry, and of any costs incurred by order or under the authority of the Court."

It is not necessary to determine whether the property belonged to the lunatic or to another person.³

The Court may dissolve the partnership in which the lunatic is a partner.⁴

As to the assumption of charge by the Court of Wards, see section 55 of the Act.

Court of Wards.

In certain cases the Court can order the transfer of stock belonging to the lunatic,⁵ and may make a vesting order in respect of stock standing in the name of the lunatic.⁶

Transfer of stock.

¹ Post, p. 444.

² Ibid. s. 48.

³ Cf. *Dinesh Chunder Banerjee v. Soudamini Debi* (1900), 4 C. W. N.,

526.

⁴ S. 52.

⁵ Ibid. s. 57.

⁶ Ibid. s. 58.

Inquisition outside Presidency Towns.

Power of
District Court
to institute
inquisition.

Whenever any person not subject to the jurisdiction of any of the High Courts at Calcutta, Madras, and Bombay is possessed of property, and is alleged to be a lunatic,¹ the District Court (i.e. the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency towns²) within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.³

Where the alleged lunatic has two residences, one in Calcutta and the other outside Calcutta, the District Court has no jurisdiction.⁴

Application by
whom to be
made.

"Section 63.—(1) Application for such inquisition may be made by any relative⁵ of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841,⁶ or by the Government Pleader, as defined in the Code of Civil Procedure, 1908,⁷ or, if the property of the lunatic consists in whole or in part of land or any interest in land, by the Collector of the district in which it is situate.

"(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards."

Inquisition by
the District
Court and
finding
thereon.

"Section 65.—(1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the inquisition.

"(2) Upon the completion of the inquisition the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs,

¹ *Ante*, p. 441, note 3.

² Art IV of 1912, s. 3 (8).

³ *Ibid.* s. 62.

⁴ *Anilakla Chowdhurani v. Dharendra Nath Saha* (1920), 48 Calc., 577; 25 C. W. N., 178.

⁵ *Ante*, p. 442.

⁶ XIX of 1841, *ante*, pp. 896, 897.

⁷ This includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by the Civil Procedure Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader (V of 1908, s. 2 (7)).

but that he is capable of managing himself and is not dangerous to himself or to others."

If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court to which the application is made, is held, the Court may issue a commission to any subordinate Court to make the inquisition.¹ On receipt of the report of the subordinate Court, the District Court shall dispose of the application.²

Inquisition by
subordinate
Court.

"Section 67.—(1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

Custody of
lunatics and
management of
their estates.

"(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic, including proper provisions for the maintenance of the lunatic, and of such members of his family as are dependent on him for maintenance,³ and it shall not be necessary to make any order as to the custody of the person of the lunatic."

As to the assumption of charge by the Court of Wards, see section 68.

Charge by
Court of
Wards.

"Section 69.—(1) If the estate of a lunatic so found consists in whole or in part of land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic :

Power to direct
Collector to
take charge.

"Provided that no such order shall be made without the consent of the Collector previously obtained.

"(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic."

"Section 71.—(1) In all other cases the District Court shall appoint a manager of the estate of a lunatic, and may appoint a guardian of his person."⁴

Appointment
of guardian
and manager.

¹ Act IV of 1912, s. 66 (1).

² *Ibid.* s. 66 (2).

³ This would apply not only to such persons as the lunatic would be legally bound to maintain, but also to such as were being maintained by

him or his estate, and perhaps also to such relatives as he might be expected to provide for.

⁴ As to the removal of a guardian or manager, see s. 80.

Restriction on
appointment of
heir.

"Section 72. The legal heir of a lunatic shall not be appointed guardian of the person of such lunatic unless the Court, or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic."

Penalty on
manager
refusing to
deliver
accounts.

"Section 81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts on any property in his hands within the time fixed by the Court, and may realise such fine as if it were a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property."

Cesser of
proceedings.

When it is shown to the District Court that the unsoundness of mind has ceased it may order an inquiry, and if it be found that it has ceased, the Court may order the proceedings to cease or be set aside.¹

Appeals.

An appeal shall lie to the High Court from any order made by a District Court under the above provisions.²

Removal to
another
Province.

As to the power of Magistrates or Courts to send lunatics to any asylum in another Province, see section 85, as altered by Act XXXVIII of 1920, Sch. I.

Removal to
United
Kingdom.

Lunatics and idiots may be removed from India to the United Kingdom by the order of a Supreme Court.³

Lunatic
trustee.

As to orders vesting the estates of lunatic mortgagees and trustees, in cases to which the English law is applicable see Act XXVII of 1866, ss. 4-6, *post*, p. 483.

As to lunatics subject to the several Courts of Wards, see *post*, p. 496.

¹ Act IV of 1912, s. 82.

² *Ibid.* s. 83.

³ 14, 15 Vict. c. 81, s. 5. The

expression "Supreme Court" here means a "High Court."

CHAPTER XLI.

MARRIAGE AND DIVORCE.

THE Courts in British India have frequently to decide questions as to the fact or validity of a marriage. Such questions arise in suits of a "civil nature."¹

Questions of marriage.

The following are examples of such suits :—

- (a) a suit to declare a Hindu marriage void ;²
- (b) a suit for a sum of money given to a guardian as consideration for his ward's marriage ;³
- (c) a suit for jactitation⁴ of marriage ;⁵
- (d) a suit for restitution of conjugal rights in the case of persons not governed by the Indian Divorce Act (IV of 1869).⁶

By section 43 of the Indian Christian Marriage Act, 1872 (XV of 1872), where one of the parties intending marriage is a minor,⁷ and both such parties are at the time resident in any of the towns of Calcutta, Madras, and Bombay, and are desirous of being married in less than fourteen days after the

Order for certificate.

¹ *Ante*, p. 294.

² *Aunjona Dasi v. Prahlad Chandra Ghose* (1870), 6 B. L. R., 243; 14 W. R. C. R., 403.

³ *Ram Chand Sen v. Audaito Sen* (1884), 10 Calc., 1054.

⁴ A false pretence of being married to another.

⁵ *Azmat Ali (Mir) v. Mahmud-ul Nissa* (1897), 20 All., 96.

⁶ *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* (1901), 28 Calc., 751; 5 C. W. N., 673; *Surjya Moni Dasi v. Kalikanta Das* (1900), 28 Calc., 37, at p. 45; 5 C. W. N., 195, at p. 201; *Dadaji Bhikaji v. Rukmabai* (1886), 10 Bom., 301; *Keshavlal Girdharilal v. Bai Parvati* (1893), 18 Bom., 327; *Binda v. Kaunthilia* (1890), 13 All., 126; *Paigi*

v. Sheonarain (1885), 8 All., 78; *Jogendromundini Dossee v. Hurrydoss Ghose* (1879), 5 Calc., 500; 5 C. L. R., 65; *Gatha Ram Mistree v. Moohita Kochin Atteah Domoonee* (1875), 14 B. L. R., 298; 23 W. R. C. R., 179; *Kuroona Moyee Debee v. Gunga Dhur Surmah* (1873), 20 W. R. C. R., 50; *Chotun Bebee v. Ameer Chund* (1866), 6 W. R. C. R., 105; *Melaram Nudial v. Thanooram Bamun* (1868), 9 W. R. C. R., 552. See *Buzloor Ruheem (Moonshee) v. Shumsoonnissa Begum* (1867), 11 M. I. A., 551, at pp. 606-610; 8 W. R. P. C., 3, at pp. 12, 13.

⁷ *I.e.* is a person who has not completed the age of twenty-one years and who is not a widower or a widow : s. 3.

entry of notice to the Marriage Registrar, a Judge of the High Court may order the Marriage Registrar to issue his certificate before the expiration of the fourteen days which are otherwise required.

Absence of
consent of
father, etc.

Under section 45 of the same Act, if any person whose consent is necessary to any marriage¹ to be solemnised by, or in the presence of, a Marriage Registrar is of unsound mind, or if such person (other than the father) without just cause withholds his consent to the marriage, the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if he is not resident within any of such towns, then to the District Judge.

The High Court or District Judge, as the case may be, may declare the marriage to be a proper marriage. Such declaration is as effectual as if the person whose consent was needed had consented to the marriage.

Registrar
doubts
authority of
person
forbidding.

By section 46 of the Act when a Marriage Registrar refuses a certificate under section 41 of the same Act (XV of 1872) a Judge of the High Courts of Bengal, Madras, and Bombay, if the district of the Registrar be within the towns of Calcutta, Madras, and Bombay respectively, or the District Judge of such district, may order the Registrar to issue such certificate.² The decision of such Judge is final.

By section 48, when the Marriage Registrar is not satisfied that the person forbidding the issue of the certificate is authorised by law so to do, the Registrar may apply, when his district is within any of the towns of Calcutta, Madras, and Bombay, to a Judge of the High Court, or if such district be not within any of such towns, then to the District Judge. Such Judge or District Judge may declare that the person forbidding the certificate is not authorised to do so.

¹ The consent of the father, if living, of any minor, or, if the father be dead, of the guardian of the person of such minor, and in case there be no such guardian, then of the mother of such minor, is required for a minor's

marriage, unless no person authorised to give such consent be resident in India, ss. 19, 44.

² *In the matter of Tucker* (1912), 16 C. W. N., 417.

Divorce Act.

The Indian Divorce Act, 1869,¹ extends to the whole of British India, and, so far as regards British subjects within the dominions of Princes and States in India in alliance with His Majesty, to such dominions,² but nothing therein authorises any Court to grant any relief under the Act, except in cases where the petitioner professes the Christian religion, and resides³ in India at the time of presenting the petition.⁴

Decrees of dissolution of marriage can only be made in the following cases :

- (a) where the marriage has been solemnised in India ; or
- (b) where the adultery, rape, or unnatural crime complained of has been committed in India ; or
- (c) where the husband has since the solemnisation of the marriage exchanged the profession of Christianity for the profession of some other form of religion.⁵

The Court can only make decrees for nullity of marriage in cases where the marriage was solemnised in India.⁶

The Divorce Courts in India have no jurisdiction to effect a divorce between persons not domiciled in British India.

A so-called "matrimonial domicile" said to be created by a *bonâ fide* residence of the spouses within the territory, of a less degree of permanence than is required to give them true domicile, cannot be recognised in creating such jurisdiction.⁷

It has been held that under the Act a foreigner is entitled to apply for a divorce provided that he resides in British India, but that a divorce obtained by him has no application beyond British India.⁸ The result of this would be that that which was not bigamy in one place might be bigamy elsewhere.

Any decree granted under the Indian Divorce Act, 1869,⁹ and confirmed or made absolute under the provisions of that Act, for the dissolution of a marriage the parties to which were at the time of the commencement of the proceedings

¹ Act IV of 1869.

² *Thornton v. Thornton* (1886), 10 Bom., 422.

³ This is not a mere casual residence. See *Nusserwanjee Wadia v. Eleonora Wadia* (1918), 38 Bom., 125; 15 Bom. L. R., 593.

⁴ S. 2.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See *Le Mesurier v. Le Mesurier*, A. C. [1895], 517; 64 L. J. P. C., 97; 72 L. T., 873; *Keyes v. Keyes*, [1921] P. D., 204. It was held in *Banerjee v. Banerjee* (1898), 8 O. W. N., 250, that residence is sufficient.

⁸ *Giordano v. Giordano* (1912), 40 Cal., 215.

⁹ Act IV of 1869.

domiciled in the United Kingdom, and any order made by the Court in relation to any such decree, shall, if the proceedings were commenced before the 1st July, 1921, be as valid, and be deemed always to have been as valid, in all respects, as though the parties to the marriage had been domiciled in India.¹

In the Act the expression "High Court" means :²

- (a) in the Provinces of Bengal, Madras, Bombay, Agra, Bihar, the Punjab,³ and Burma⁴ the chartered High Court having jurisdiction in those Provinces respectively ;
- (b) in any Non-Regulation Province and in any place in the dominions of the Princes and States of India in alliance with His Majesty, the High Court to whose original criminal jurisdiction the petitioner is for the time being subject or would be subject if he or she were an European British subject of His Majesty.⁵

The High Court having jurisdiction in any particular case is the one within the local limits of whose ordinary appellate jurisdiction the husband and wife reside or last resided together.⁶

In a case where there was no permanent residence the Calcutta and Bombay High Courts treated a temporary residence for a short period as a compliance with this provision.⁷

"Section 3.—(2)⁸ 'District Judge'⁹ means :

- in the Regulation provinces—a Judge of a principal Civil Court of original jurisdiction ;
- in the Non-Regulation provinces¹⁰ other than Sindh and Burma—a Commissioner of a Division ;

District
Judge.

¹ 11, 12 Geo. V. c. 18, s. 1.

² Act IV of 1869, s. 3 (1).

³ Act XVIII of 1919, s. 1.

⁴ Bur. Act XI of 1922, Sch. I.

⁵ S. 3 (1).

⁶ Act IV of 1869 s. 3 (1). *Borgonha v. Borgonha* (1920), 44 Bom., 924 ; 22 Bom. L. R., 861.

⁷ *Bright v. Bright* (1909), 36 Calc., 964 ; *Murphy v. Murphy* (1920), 45 Bom., 547. See, however, *Flowers v. Flowers* (1910), 32 All., 203.

⁸ Repealed in the Punjab: Act XVIII of 1884, s. 2, and in the Central

Provinces: Act V of 1901, s. 8, in so far as it defines "District Judge" to mean "the Commissioner of a Division."

⁹ Under the powers conferred by s. 6 of the Scheduled Districts Act, 1874 (XIV of 1874), the powers of a District Judge were conferred on the Deputy Commissioner, Khasi and Jaintia Hills, the Garo Hills District, and the Naga Hills.

¹⁰ See Acts XI of 1869, s. 97 ; Sch. II ; VI of 1900, s. 47 ; Sch. I ; VI of 1900, s. 1(2).

in Sindh—the Judicial Commissioner of that Province;
 in Burma¹—a Judge of a District Court;
 and in any place in the dominions of the Princes and States
 aforesaid—such officer as the Governor-General in Council
 shall from time to time appoint in this behalf by notification
 in the Gazette of India, and, in the absence of such officer,
 the High Court in the exercise of its original jurisdiction under
 this Act.”

In the Santhal Parganas the Commissioner has been declared to be the District Judge, and the High Court of Calcutta to be the High Court, for the purposes of the Act: see Santhal Parganas Justice Regulation (Regulation V of 1898), s. 15 (8). In Oudh the Judicial Commissioner is, for the purposes of this Act, to be deemed the Commissioner of the Division: see Oudh Civil Courts Act (Act XIII of 1879), s. 27. In the North-West Frontier Province the Divisional Court shall, for the purposes of this Act, be deemed to be the District Court for all districts comprised in the Division: North-West Frontier Province Law and Justice Regulation (Regulation VII of 1901), s. 53, proviso (a).

The Resident at Aden, not being a Commissioner of a Division, cannot try suits under the Indian Divorce Act, 1869.²

The District Court having jurisdiction is the one within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under the Indian Divorce Act, the husband and wife reside or last resided together.³

“Section 4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensa et toro* and in other cases, suits and matters matrimonial, shall be exercised by such Courts, and by the District Courts, subject to the provisions in this Act contained and not otherwise: except so far as relates to the granting of marriage licences, which may be granted as if this Act had not been passed.”⁴

Matrimonial
jurisdiction of
High Courts.

“Section 7. Subject to the provisions contained in this Act, the High Court and District Court shall, in all suits and proceedings hereunder, act and give relief upon principles and rules which, in the opinion of the said Courts, are as nearly as may be comparable to the principles and rules on which the Court for Divorce and Matrimonial cases in England for the time being acts and gives relief:

Court to act
upon principles
of English
Divorce Court.

¹ Bur. Act XI of 1922, Sch. I.

² *Mouna v. Mouna* (1912), 37 Bom., 57; 14 Bom. L. R., 872.

³ Act IV of 1869, s. 3 (3). This does not include the place of a tem-

porary sojourn without any intention of remaining: *Flowers v. Flowers* (1910), 32 All., 208. See, however, *Bright v. Bright* (1909), 86 Calc., 964.

⁴ See *Lish v. Lish*, [1923 Pat.], 127.

"Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the partners to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded." ¹

An attachment before judgment cannot be made in proceedings under the Divorce Act.²

Extraordinary
jurisdiction of
High Court.

"Section 8. The High Court may, wherever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

"The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any such District Judge."

Reference to
High Courts.

District Courts can refer to the High Court questions of law or usage having the force of law which arise in the hearing of a suit under the Act.³

Petition to
District or
High Court.

A petition for dissolution of marriage⁴ or for nullity of marriage,⁵ or for judicial separation⁶ can be presented either to the District or to the High Court having jurisdiction.

Where a petition for dissolution is dismissed by the District Court, the petitioner may nevertheless present a similar petition to the High Court.⁷

Confirmation
by High Court.

A decree for dissolution of marriage⁸ or for nullity⁹ made by a District Court is subject to confirmation by the High Court. This is not possible after the death of the petitioner.¹⁰

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.¹¹

¹ This proviso was added by Act X of 1912, s. 2.

² *Phillips v. Phillips* (1910), 87 Calo., 618.

³ S. 9.

⁴ Act IV of 1869, ss. 10, 11.

⁵ *Ibid.* s. 18.

⁶ *Ibid.* s. 22.

⁷ *Ibid.* s. 18.

⁸ *Ibid.* s. 17.

⁹ *Ibid.* s. 20.

¹⁰ *Butterfield v. Butterfield* (1928), 50 Calo., 158.

¹¹ Act IV of 1869, s. 17.

The High Court may allow the petition to be withdrawn.¹

Where a decree for dissolution or judicial separation has Alimony. been made by a District Court, it is that Court, and not the High Court, which can make an order for alimony. The High Court can make such order when it makes a decree for divorce or judicial separation.²

Parsi Matrimonial Courts.

The Parsi Marriage and Divorce Act, 1865 (XV of 1865), ^{Constitution of Courts.} which applies to the whole of British India and to some of the scheduled districts, constitutes a special Court in each of the Presidency towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments³ as such Governments respectively shall think fit.⁴

"Section 16. The Court so constituted in each of the ^{Parsi Chief Matrimonial Courts.} Presidency towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

"The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction⁵ of the High Court.

"The Chief Justice of the High Court, or such other Judge of the same Court, as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates."⁶

In this Act the expression "High Court" means the highest Court of Civil appeal in a part of India in which the Act operates.⁷

"Section 17. Every Court so constituted at a place other ^{Parsi District Matrimonial Courts.} than a Presidency town shall be entitled the Parsi District Matrimonial Court of such place.

"Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall

¹ *Dare v. Dare* (1910), 84 Mad., 389.

² Act IV of 1869, s. 87. *Wallace v. Wallace* (1915), 40 Bom., 109; 17 Bom. L. R., 948. The Court cannot make the order if there has been unreasonable delay: *Lloyd v. Lloyd* (1921), 44 Mad., 989.

³ The Governor-General in Council may invest the chief executive officer

of any part of British India under the immediate administration of the Government of India with the powers vested by the Act in a Local Government: s. 52.

⁴ S. 15.

⁵ *Ante*, pp. 87, 90.

⁶ S. 16.

⁷ S. 2.

be conterminous with the limits of the district in which it is held.

"The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates.¹

Power to alter territorial jurisdiction.

"Section 18. The Local Government² may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

Certain districts within jurisdiction of Chief Matrimonial Court.

"Section 19. Any district which the Local Government, on account of the fewness of the Parsi inhabitants, shall deem it expedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court."

Appointment of delegates.

"Section 21. The Local Governments shall, in the Presidency towns and districts subject to their respective Governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

"The persons so appointed shall be Parsis: their names shall be published in the official Gazette, and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty.

Power to appoint new delegates.

"Section 22. The appointment of a delegate shall be for life.

"But whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code³ or other law for the time being in force, then and so often the Local Government⁴ may appoint any other person, being a Parsi, to be a delegate in his stead, and the name of the person so appointed shall be published in the official Gazette."

Selection of delegates.

"Section 24. The delegates selected under sections 16⁵ and 17⁶ to aid in the adjudication of suits under the Act shall be taken under the orders of the Presiding Judge of the Court

¹ S. 17.

² See Act X of 1897, s. 3 (29).

³ Act XLV of 1860.

⁴ See Act X of 1897, s. 3 (29).

⁵ *Ante*, p. 453.

⁶ *Ante*, pp. 453, 454.

in due rotation from the delegates appointed by the Local Government under section 21.”¹

“Section 26. All suits instituted under the Act must be brought in the Court within the limits of whose jurisdiction the defendant resides² at the time of the institution of the suit. Court in which suits to be brought.

“When the defendant shall at such time have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

As to the grounds upon which a Matrimonial Court can give a decree for nullity, for dissolution in the case of absence, and for divorce or judicial separation, or for restitution of conjugal rights, see sections 27 to 36 of the Act.

The Court has power to make an order for alimony.³

Alimony.

Except in a proceeding under this Act, a Civil Court has no power to make a decree for alimony in the case of Parsis.⁴

“Section 37. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.” Restitution in case of husband under sixteen, or wife under fourteen.

“Section 39.⁵ Notwithstanding anything contained in section 16 or section 17, where in the case of a trial in a Parsi Chief Matrimonial Court, not less than nine or, in the case of a trial in a Parsi District Matrimonial Court, not less than six delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegate or delegates. Absence of delegates during trial.

“Where at any stage of a trial in a Parsi Chief Matrimonial Court less than nine, or in a Parsi District Matrimonial Court less than six, delegates are present who have attended throughout the proceedings and the presiding Judge is of opinion that it is not possible without undue delay to secure the attendance throughout the proceedings of nine or six delegates, as the case may be, the proceedings shall be stayed and a new trial shall be held with the aid of fresh delegates.”

¹ *Ante*, p. 454.

² *Cf. ante*, p. 451.

³ *Ss.* 33, 34.

⁴ *Goolbai v. Behramsha* (1919), 88 Bom., 615.

⁵ Added by Act XX of 1922, s. 2.

Determi-
nation of
questions of
law, procedure,
and fact.

"Section 41.¹ In suits under the Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates who have attended throughout the trial: Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

Appeals.

"Section 42. An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground."

The Court can make orders as to the maintenance, custody, and education of children under the age of sixteen years, the marriage of whose parents is the subject of the suit.²

Native Converts.

Native Con-
verts' Marriage
Dissolution
Act.

By the Native Converts' Marriage Dissolution Act, 1866 (XXI of 1866), which extends to the whole of British India except as regards the scheduled districts,³ and has been declared to be in force in the Santhal Parganas⁴ and in the Arakan Hill District,⁵ and in several other scheduled districts, a mode of judicial divorce is provided in the case of a husband and wife who are domiciled in British India, and neither of whom is a Christian, Mahomedan, or Jew, the husband being over sixteen and the wife over thirteen years of age.

In this Act the expression "High Court" means the highest Civil Court of appeal in any place to which the Act extends.⁶

Suit for
conjugal
society.

"Section 4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

"Section 5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native

¹ As amended by Act XX of 1922,

² S. (1).

³ S. 44.

⁴ S. 85; Act XV of 1874, s. 3.

⁴ Reg. III of 1872, s. 3, Sch.

⁵ Reg. IX of 1874, s. 3.

⁶ Act XXI of 1866, s. 3.

husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

"Section 6. If the respondent, at the time of the commencement of such suit, reside within the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court: otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit." Where suit to be brought.

After an adjournment of the case for a year, and if the desertion or repudiation still continues, the Court can dissolve the marriage.¹ Dissolution.

"Section 29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court." Reference to High Court.

"Section 31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the Presidency towns." Case to be decided by three Judges.

As to the power of Judges of High Courts and other Judges to take acknowledgments from married women disposing of or enlarging estates of inheritance less than an estate in fee simple in cases to which the English law is applicable,² see the Conveyance of Land Act, 1854.³ Acknowledgments by married women.

¹ S. 16. Act XXI of 1866, ss. 15, 16.

² Act XXXI of 1854, s. 5.

³ See *post*, p. 483.

CHAPTER XLII.

MERCHANT SHIPPING.

See Colonial Courts of Admiralty, *ante*, chapter xxxiii.

Order for sale
of ship on
transmission to
unqualified
person.

WHERE the property in a registered ship or share therein is transmitted on marriage, death, bankruptcy, or otherwise to a person not qualified to own a British ship, then if the ship is registered in British India, the Court having the principal civil jurisdiction at the place of registration may, by or on behalf of the unqualified person, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise as the Court direct.¹

Summary
proceedings
for wages.

A seaman or apprentice, or a person duly authorised on his behalf, may sue for his wages to an amount not exceeding five hundred rupees, before a magistrate acting in or near the place at which his service has terminated or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the Court in the matter shall be final.²

Restrictions on
suits for wages.

No suit or proceeding for the recovery of wages under the sum of five hundred rupees shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty or in any Courts of Civil jurisdiction other than the Court of Small Causes, where such Court exists, unless the owner of the ship is adjudged bankrupt, or unless the ship is under arrest or is sold by the authority of any such Court or unless the Magistrate refers the case to be

¹ 57, 58 Vict. c. 60, s. 28.

² Act I of 1859, s. 55. There is a similar provision in 57, 58 Vict. c. 60, s. 164, which provides that the case shall be tried by a Court of summary

jurisdiction, which would here include the Court of a Magistrate in India. See 52, 53 Vict. c. 68, s. 13 (11).

adjudged by such Court,¹ or where neither the owner nor the master of the ship is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.²

Where a seaman is engaged for a voyage or engagement which is to terminate in the United Kingdom, he shall not be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as is required by the Merchant Shipping Act, 1894 (57, 58 Vict. cap. 60), and with the written consent of the master, or proves such ill-usage on the part of, or by the authority of, the master, as to warrant reasonable apprehension of danger to his life if he were to remain on board.³

Wages not recoverable abroad in certain cases.

The master of a ship has the same remedy for his wages as a seaman.⁴

Remedies of master.

As to the power of a Court to rescind a contract between owner or master and seaman or apprentice, see 57, 58 Vict. cap. 60, s. 168.

A Colonial Court of Admiralty or a Vice-Admiralty Court may, upon the application of any owner of a ship or his agent, or of the consignee of the ship,⁵ or of any certificated mate, or of one-third or more of the crew of the ship, remove the master of a ship within its jurisdiction, if that removal is shown to the satisfaction of the Court by evidence on oath to be necessary.⁶

Removal of master.

The Court may appoint a new master instead of the one removed; but where the owner, agent, or consignee of the ship is within the jurisdiction of the Court, such appointment cannot be made without the consent of that owner, agent or consignee.⁷

The Board of Trade can re-issue and return the cancelled or suspended certificate.⁸

Nothing in the Indian Merchant Shipping Act, 1859, shall extend to any ship belonging to His Majesty or the Government.⁹ *

As to the authority of the Indian Legislature to authorise

¹ Act I of 1859, s. 57. See 57, 58 (1922), 50 Cal., 29.
Vict. c. 60, s. 165.

² 57, 58 Vict. c. 60, s. 165.

³ *Ibid.* s. 166 (1).

⁴ Act I of 1859, s. 58. See 57, 58 Vict. c. 60, s. 167; 6 Edw. VII, c. 48, s. 57. *Morrier v. Lala Raghumal*

⁵ 57, 58 Vict. c. 60, s. 472 (1).

⁶ *Ibid.* s. 472 (2).

⁷ *Ibid.* s. 472 (3).

⁸ 57, 58 Vict. c. 60, s. 474.

⁹ Act I of 1859, s. 114, as amended by Act XXV of 1919, s. 2.

a Court or tribunal to make inquiries as to shipping casualties and the conduct of officers, see 57, 58 Vict. cap. 60, s. 478. As to the powers of such Court, see Act V of 1888, as amended by Act XXV of 1919, s. 3.

As to Courts of Survey, see 57, 58 Vict. cap. 60, ss. 487, 488.

As to appeals to such Courts, see *ibid.* s. 275 (1).

Jurisdiction
over ships
lying off the
coast.

Where any district within which any Court, Justice of the Peace, or other Magistrate, has jurisdiction either under this Act or at Common Law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, any such Court, Justice, or Magistrate shall have jurisdiction over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river, or navigable water, and over all persons aboard that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the Court, Justice, or Magistrate.¹

Survey of
unsafe ships.

In the case of a ship being detained by the Government as unsafe, under powers given by the Indian Merchant Shipping Act, 1880,² an appeal lies to the Court of Survey for the port where the ship is detained. A reference may also be made by the Local Government.³

Court of
Survey.

The Court of Survey for a port shall consist of a Judge sitting with two assessors.⁴

The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class, or other fit person appointed in this behalf by the Local Government either generally or for any specified case.⁵

The Assessors shall be persons of nautical, engineering or other special skill and experience.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge in the manner prescribed out of a list of persons from time to time prepared for the purpose, or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.⁶

¹ 57, 58 Vict. c. 60, s. 695.

² Act VII of 1880, ss. 7, 8.

³ *Ibid.* s. 10.

⁴ *Ibid.* s. 18.

⁵ *Ibid.* s. 14.

⁶ *Ibid.* s. 15.

Section 14 of the Burma Coast-lights Act, 1879 (Act IX of 1879), is as follows :

" If any dispute arises as to whether a vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses, or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras, and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising, at the place where the dispute arises, powers under the Code of Criminal Procedure¹ not less than those of a Magistrate of the second class. All decisions under this section shall be final."

As to Naval Courts on the High Seas and abroad, see 57, 58 Vict. Naval Courts. c. 60, ss. 480 to 486.

As to appeals from such Courts, see 6 Edw. VII. c. 48, s. 68.

¹ Act V of 1898.

CHAPTER XLIII.

MUNICIPALITIES.

As to the interference by a Civil Court with the action of municipalities, see *ante*, p. 301.

In the following cases provision is made for suits against municipalities.

Ajmere.

Ajmere.

The Ajmere Municipalities Regulation, 1886,¹ does not bar the jurisdiction of a Civil Court to entertain a suit for damages at the instance of a person who has been wronged by an illegal action of the Committee.²

Assam.

Assam,
expenses and
fees.

In Assam any owner or occupier of land may contest his liability to pay any expenses or fees under Parts VI or VII of the Bengal Municipal Act, 1876,³ or may contest the amount which he has been called upon to pay, in a Civil Court of competent jurisdiction.⁴

Where any damages or compensation is by chapter ii. directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, in case of dispute, shall be ascertained and determined by a Civil Court of competent jurisdiction.⁵

By section 68 of the Assam Local Self-Government Act, 1915,⁶ any owner or occupier of land may contest his liability to pay any expenses under sections 60 and 61 of that Act, or may contest the amount which he has been called upon to pay, in a Civil Court of competent jurisdiction :

Provided that the fact of such action being instituted shall

¹ Reg. V. of 1886.

² *Municipal Board of Ajmere v. Kifayatullah* (1915), 37 All., 220.

³ Ben. Act V of 1876.

⁴ S. 189.

⁵ S. 190.

⁶ Assam Act I of 1915.

be no bar to the recovery of the said amount under the provisions of the Act.

Bengal.

The Bengal Municipal Act, 1884 (Bengal Act III of 1884), applies to Bengal (except Calcutta and Sambalpur district), Eastern Bengal, and certain towns in Assam, and Bihar and Orissa.

By that Act no objection can be taken to any assessment or rating, nor shall the liability of any person to be assessed or rated be questioned in any other manner or by any other authority than is provided by that Act.¹ Assessment.

A Civil Court may determine whether the assessment is *ultra vires*.²

"Section 183. Whenever any works or any alterations and improvements of which the Commissioners are authorised by Part V or Part VI of this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners shall certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any Court of competent jurisdiction. Recovery of costs of works.

"Section 184. Any owner or occupier of land may contest his liability to pay any expenses or fees under Part V or Part VI of that Act, or may contest the amount which he has been called upon to pay, in a Civil Court of competent jurisdiction. Fees and expenses.

"Section 185. Where any damages or compensation, other than compensation payable under section 35 (for land taken up under the Land Acquisition Act) are by this Act directed to be paid by the Commissioners, the amount and, if necessary, the apportionment of the same shall in case of dispute be ascertained and determined by a Civil Court of competent jurisdiction." Damages and compensation.

There is a right to sue for the sale proceeds of materials Sale of materials of houses.

¹ S. 116. *Chairman Municipal Board, Chapra v. Basudeo Narain Singh* (1910), 37 Cal., 374.

² *Chairman, Giridih Municipality v. Srish Chandra Mosumdar* (1908), 35 Cal., 859; 12 C. W. N., 709.

of anything which has been pulled down or removed under the provisions of section 210.¹

Bihar and Orissa.

Contest of liability.

By section 378 of the Bihar and Orissa Municipalities Act, 1922,² any owner or occupier of land may contest his liability to pay any expenses or fees under sections 364 to 366, or may contest the amount which he has been called upon to pay in a Civil Court of competent jurisdiction.

By section 379 of the same Act: "Should a dispute arise touching the amount of compensation which the Commissioners are required by that Act to pay, it shall be settled in such manner as the parties may agree, or in default of agreement the amount and, if necessary, the apportionment of the same shall be ascertained and determined by a Civil Court of competent jurisdiction."

Calcutta.

Disqualification of Commissioner.

By the Calcutta Municipal Act, 1899 (Bengal Act III of 1899), which applies only to Calcutta, the Chief Judge of the Court of Small Causes can determine whether a Commissioner has become disqualified from being a Commissioner under section 39 of the Act, and his decision is final.³

Calcutta Assessment.

There is an appeal to the Calcutta Small Cause Court by a person dissatisfied with orders passed on his objection with regard to the assessment of property for the purpose of rates.⁴

Valuation to be final.

Every decision made by the Court of Small Causes under this provision shall, subject to the provisions of section 6 of the Presidency Small Cause Court Act, 1882,⁵ or section 25 of the Provincial Small Cause Courts Act, 1881,⁶ as the case may be, be final.⁷

Ways, water-courses, drains.

If any difference arises between the Chairman and persons affected by his action in providing and making ways, water-courses, and drains in substitution for any that may be interrupted, injured or rendered useless by the execution of drainage works, such differences shall be settled by the Court

¹ S. 212.

² B. & O. Act VII of 1922.

³ S. 41.

⁴ Ben. Act III of 1899, s. 162, confirmed by Act XII of 1898, s. 1. See

Corporation of Calcutta v. Cohen (1901), 6 Q. W. N., 490.

⁵ *Ante*, p. 255.

⁶ *Ante*, p. 275.

⁷ Ben. Act III of 1899, s. 162.

of Small Causes having jurisdiction in the place where such works are executed.¹

If, when the Chairman demands payment of any expenses under section 602 of the Act (*i.e.* payable under the Act or any rule, bye-law, or regulation), his right to demand the same or the amount of the demand is disputed, he shall refer the case for the determination of the Court of Small Causes, or, if the amount involved exceeds two thousand rupees, the High Court.²

Reference to
Small Cause
Court.

"Section 617. Where in any case not so provided for, any municipal authority or person is required by or under this Act or any rule, bye-law, or regulation made thereunder to pay any expenses or any compensation, the amount to be so paid and, if necessary, the apportionment of the same, shall, in case of dispute, be determined, except as is otherwise provided in section 505, sub-section (3),³ section 518,⁴ section 596,⁵ section 615,⁶ and section 632,⁷ and in the Land Acquisition Act, 1894,⁸ as amended by section 557 of this Act, by the Court of Small Causes."

Application to
Small Cause
Court in other
cases.

Although the Small Cause Court has exclusive jurisdiction to assess the amount of compensation, a Civil Court, otherwise having jurisdiction, may, in appropriate circumstances, grant a declaratory decree.⁹

"Section 619. Instead of proceeding in any manner hereinbefore prescribed for the recovery of any expenses or compensation of which the amount due has been ascertained as provided in the Act, or after such proceedings have been taken unsuccessfully or with only partial success, the sum due or the balance of the sum due, as the case may be, may be recovered by suit brought in any Court of competent jurisdiction against the person liable for the same."

Power to sue.

"Section 627. The Chief Judge of the Court of Small

Delegation of
powers of
Chief Judge.

¹ Ben. Act III of 1899, s. 324 (1).

² S. 616 (1).

³ Compensation for seizure of medicine as unwholesome or unfit for medicine, s. 505 (3). A magistrate can under that section give compensation.

⁴ Compensation for destruction of hut or shed to prevent the spread of a dangerous disease.

⁵ Compensation for entry on land

adjacent to works.

⁶ Compensation by offenders for damage done to property of the Corporation.

⁷ Compensation to complainant in case of nuisance.

⁸ Act I of 1894.

⁹ *Joseph v. Calcutta Corporation* (1916), 48 I. A., 248; 44 Calo., 87; 21 C. W. N., 194; 18 Bom. L. R., 878.

Causes of Calcutta may delegate, either generally or specially, to any other Judge of the said Court his power to receive applications except the hearing and adjudication thereof."

Bombay District Municipalities.

Decision of
claims to
property by
or against
Municipality.

By section 50A of the Bombay District Municipalities Act, 1901,¹ added to that Act by section 1 of Bombay Act X of 1912:

- (1) In any municipal district to which a survey of lands other than lands ordinarily used for the purpose of agriculture only has been or shall be extended under any law for the time being in force, where any property or right in or over any property is claimed by or on behalf of the Municipality, or by any person as against the Municipality, it shall be lawful for the Collector, after formal inquiry, of which due notice has been given, to pass an order deciding the claim.
- (2) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority as determined according to section 204 of the Bombay Law Revenue Code, 1879,² shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.
- (3) (a) The powers conferred by this section on a Collector may also be exercised by an Assistant or Deputy Collector or by a survey officer, as defined in the Bombay Revenue Code, 1879.

Dispute as to
compensation,
etc.

A District Court may determine a dispute with respect to any compensation, damages, costs and expenses directed to be paid by the Act, the amount and, if necessary, the apportionment of the same in the event of the panchayat

¹ Bom. Act III of 1901.

² Bom. Act V of 1879.

appointed under section 160 (2) by the District Judge not giving a decision within one month from its appointment.¹

No appeal lies from the decision of a District Judge under this provision.²

City of Bombay.

The following provisions are to be found in the City of Bombay Municipal Act, 1888 :³

The jurisdiction conferred by that Act upon Appellate Benches of Municipal Authorities and upon Presidency and other Magistrates and Courts of Small Causes or any Judge of such a Court are as valid as if the Act had been passed by the Governor-General in Legislative Council.⁴

There is an appeal to the Chief Judge of the Small Cause Court at Bombay⁵ from an order of the Commission rejecting any claim, objection, or choice made in respect of the Municipal Roll under section 19.⁶ Appeal against orders of revision of electoral list.

If the Chief Judge be unable to dispose of such application in the specified time, he may transfer it for hearing to any Judge of the Small Cause Court.⁷

The Chief Judge of the Small Cause Court can determine the validity of the qualification of a person who has been declared to be elected a councillor, or the validity of his election.⁸ Election of councillor.

The Chief Judge's order is conclusive.⁹

Appeals against any rateable value or tax fixed or charged under the Act shall be heard and determined by the Chief Judge of the Small Cause Court.¹⁰ Appeals against valuation and taxes.

If before or on the hearing of any such appeal any question Reference to Bombay High Court.

¹ Bom. Act III of 1901, s. 160 (3). As to the determination and recovery of costs and expenses directed by the Act to be paid, see Bom. Act VIII of 1914, s. 27.

² *Chunilal Virchand v. Ahmedabad Municipality* (1911), 36 Bom., 47.

³ Bom. Act III of 1888.

⁴ Act XII of 1888, s. 1.

⁵ Bom. Act III of 1888, s. 3 (l).

⁶ S. 20. As to the duty of the Judge, see *In the matter of Sarafally Mamooji* (1910), 34 Bom., 659; 12 Bom. L. R., 737.

⁷ S. 20 (2), added to the Act by Bom. Act VI of 1922, s. 10.

⁸ S. 33 (1).

⁹ S. 33 (3). *Bhaishankar Nanabhai v. Municipal Corporation of Bombay* (1907), 31 Bom., 604; 9 Bom. L. R., 417. Where the Chief Judge improperly refuses to enter upon a complaint, an order can be made under s. 45 of the Specific Relief Act (I of 1877); *In the matter of Sarafally Mamooji* (1910), 34 Bom., 659; 12 Bom. L. R., 737.

¹⁰ Ss. 217, 218.

of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises or on which the Chief Judge of the Court of Small Causes of Bombay entertains reasonable doubt, the Chief Judge may, either of his own motion or on the application of either or any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point, for the decision of the High Court of Judicature at Bombay.¹

Unappealed values and taxes and decisions on appeal are final.²

Disputes as to
payment of
expenses.

If, when the Commissioner demands payment of any expenses under section 491 (for work done under the Act), his right to demand the same or the amount of the demand is disputed, or if, in the case of expenses incurred by the Commissioner in taking temporary measures under sub-section (2) of section 329 (repairing or enclosing dangerous places), the necessity for such temporary measures is disputed, the Commissioner shall refer the case for the determination of the Chief Judge of the Small Cause Court.³

Disputes as to
expenses and
compensation
in other cases.

If, in any case not falling under section 491, any person is required by the Act or by any regulation or bye-law framed under the Act, to pay any expenses or any compensation, the amount to be so paid and, if necessary, the apportionment of the same shall, in case of dispute, be determined, except as is otherwise provided in sections 502 and 515, by the Chief Judge of the Small Cause Court.⁴

The amount determined is recoverable as if it were due under a decree of the Small Cause Court.⁵

Appeal to
High Court.

An appeal lies to the High Court at Bombay from a decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504, when the amount of the claim in respect of which the decision is passed exceeds two thousand rupees.⁶

Where it does not exceed that amount the decision of the Chief Judge is final.⁷

¹ Act XII of 1888, s. 2 (1).

² Bom. Act III of 1888, s. 219 (1).

³ S. 503.

⁴ S. 504.

⁵ S. 505.

⁶ Act XII of 1888, s. 3 (1). This

includes a decision granting compensation in case of a set-back: *Municipal Commissioner for Bombay v. Abdul Hak (Syed)* (1898), 18 Bom., 184.

⁷ Act XII of 1888, s. 3 (2).

Instead of proceeding in the above manner, or after such proceedings have been taken unsuccessfully or with only partial success, the sum due or the balance of the sum due, as the case may be, may be recovered by a suit brought against the person liable for the same in any Court of competent jurisdiction.¹

Suit for recovery of expenses of compensation.

If the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any regulation or bye-law made under the Act or with any requisition made under the Act or under any such regulation or bye-law, in respect of such building or land, the owner may apply to the Chief Judge of the Small Cause Court.²

Remedy of owner against occupier.

The Chief Judge may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with any provision of the Act, and may also, if he thinks fit, direct that the costs of such application and order be paid by the occupier.³

Delegation of powers by Chief Judge.

The Chief Judge of the Small Cause Court may:

- (a) delegate, either generally or specially to any other Judge of the said Court, power to receive applications, appeals, and references under the Act and to discharge any other duty in connection with such applications, appeals, and references, except the hearing and adjudication thereof;
- (b) if, for any reason, it shall be necessary so to do in order to secure the disposal of any application made to him under section 20⁴ within the limited period prescribed in that section, delegate to any other Judge of such Court the hearing and adjudication of the application.⁵

Madras.

The Madras District Municipalities Act, 1884,⁶ as amended by the Madras District Municipalities Act Amendment Act, 1897,⁷ contains the following:

As to the immunity of the Chairman from suit, see Madras Act IV of

¹ S. 506.

² S. 507 (1).

³ S. 507 (2). As to the effect of such order, see s. 507 (3).

⁴ *Ante*, p. 467.

⁵ S. 512.

⁶ Mad. Act IV of 1884.

⁷ Mad. Act III of 1897.

1884, s. 261 (4), as amended by Madras Act III of 1897, s. 171, *ante*, p. 810.

Want of form
in proceedings.

No proceedings under the Act shall from defect in form be quashed or set aside by any Court of Justice. No suit shall be brought in any Court to recover any sum of money collected under the authority of the Act or to recover damages on account of any assessment, or collection of money under such authority, provided that the provisions of the Act have been in substance and effect complied with, and no distraint or sale under the Act shall be deemed unlawful for any error or defect of form.¹

Madras City.

Disqualifica-
tion of
councillors.

By the Madras City Municipal Act, 1919,² the Chief Judge of the Small Cause Court shall in case of dispute determine whether a person is disqualified for office as a councillor.

Determination
by Small
Cause Court of
sums payable.

“Section 388. Where in any case not provided for in section 395 (damage to municipal property), any municipal authority or any person is required by and under this Act or any rule, bye-law, or regulation made under it to pay any damages, compensation, charges or expenses or contributions, the amount or apportionment of the same shall, in case of dispute, be ascertained and determined, except as is otherwise provided in section 385 (destruction of hut to prevent spread of disease), section 379 (entry on lands adjacent to works), and in the Land Acquisition Act, 1894,³ by the Chief Judge of the Small Cause Court.”

Burma.

Reference as to
assessment.

By the Burma Municipal Act, 1898 (Burma Act III of 1898), except in the case of the Rangoon Municipality, if upon an appeal from the decision of a sub-committee inquiring into an objection to an assessment⁴ any question as to the liability to, or the principle of, assessment arises on which he entertains doubt, the Deputy Commissioner or Commissioner hearing the appeal may, of his own motion, and shall, on the application of the appellant, or of the president of the respondent committee, made at the hearing, draw up a statement of

¹ Mad. Act IV of 1884, s. 262, as amended by Mad. Act III of 1897, s. 172, and Mad. Act IV of 1916, s. 2.

² Mad. Act IV of 1919, s. 54.

³ Act I of 1894.

⁴ Bur. Act III of 1898, s. 68 (1), (2).

the facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point and the record of the case, for the decision of the High Court at Rangoon.¹

When such decision has been sent to the officer who made the reference he must dispose of the case in conformity therewith.²

Subject to the above, the decision of the sub-committee, Deputy-Commissioner, or Commissioner, as the case may be, is final.³

An appeal from the decision of the President of the Rangoon Municipality, settling an assessment list, lies to the Judge of the Court of Small Causes.⁴ Settlement of assessment list in Rangoon.

If on the hearing of such appeal any question as to the liability to, or the principle of, assessment arises on which he entertains doubt, the Judge hearing the appeal may of his own motion, and shall, on the application of the appellant, or the president of the respondent committee, made at the hearing, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point and the record of the case, for the decision of the High Court at Rangoon.⁵

Punjab.

Under section 84 (2) of the Punjab Municipalities Act, 1911, the officer hearing an appeal against the assessment or levy of any tax or against the refusal to refund any tax under the Act, may, either of his own motion or on the application of any person interested, draw up a statement of the facts of the case, and the point on which doubt is entertained and refer the statement with his opinion on the point for the decision of the High Court at Lahore.⁶ Reference of appeal.

By section 319 a similar power of reference is given in the case of a question as to the legality of the prohibition, direction, notice or order under appeal.

¹ Bur. Act XI of 1922, Sch. I.

² Bur. Act III of 1898, s. 63 (6).

³ *Ibid.* s. 63 (7).

⁴ *Ibid.* s. 64 (2).

⁵ Bur. Act III of 1898, s. 64 (5), as amended by Bur. Act XI of 1922, Sch. I.

⁶ Punj. Act III of 1911, s. 84 (2).

United Provinces.

The United Provinces Municipalities Act, 1916,¹ contains the following :—

Reference to
High Court.

“Section 162.—(1) If during the hearing of an appeal relating to taxation, a question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt he may, either on his own motion or on the application of a person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court.”

Bar to juris-
diction of
matters of
taxation.

“Section 164.—(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in the Act.

“(2) The order of the appellate authority confirming, setting aside, or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final.”

¹ U. P. Act II of 1916.

CHAPTER XLIV.

PATENTS, DESIGNS, AND COPYRIGHT.

THE following provisions are to be found in the Indian Patents and Designs Act, 1911 (II of 1911):—

The Governor-General in Council may refer a petition for the extension of the term of a patent¹ or for revocation of a patent² to a High Court³ for disposal.

Extension of term of patent.

A High Court can on a petition being presented to it revoke a patent on specified grounds.⁴

Revocation of patent.

A High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court, or any District Court, of any question arising upon a petition to itself for revocation of a patent.⁵

Framing issue for trial before the Courts.

If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.⁶

If the issue be directed to a District Court, the finding of that Court is not subject to appeal, but a copy of the evidence taken upon the trial certified by the Judge of the Court shall be transmitted, together with any remarks which he may think fit to make thereon, to the High Court directing the issue, and the High Court may thereupon act upon the finding of the District Court, or dispose of the petition on the evidence recorded, or direct a new trial.⁷

A patentee may institute a suit in a District Court⁸ having jurisdiction⁹ for infringement of a patent.¹⁰

Suits for infringement of patent.

¹ Act II of 1911, s. 15 (3).

² *Ibid.* s. 22 (2).

³ I.e. the highest Civil Court of Appeal in a Province: Act X of 1897, s. 8 (24).

⁴ Act II of 1911, s. 26.

⁵ *Ibid.* s. 28 (1).

⁶ *Ibid.* s. 28 (2).

⁷ *Ibid.* s. 28 (3).

⁸ This includes a High Court acting in its ordinary original civil jurisdiction.

⁹ See *ante*, p. 298.

¹⁰ Act II of 1911, s. 29 (1).

Rectification
of Register.

A High Court has power to rectify the register kept under the Act.¹

Copyright.

Jurisdiction
in cases under
Copyright Act.

Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge.²

¹ Act II of 1911, s. 64. The Controller has no jurisdiction to cancel the registration: *Gammeter v. Controller of Patents and Designs* (1917), 22 C. W. N., 580.

² Act III of 1914, s. 18. "High Court" here means the highest Civil Court of Appeal in the part of British

India in which the Act operates: Act X of 1897, s. 3 (24). "District Judge" here means the Judge of a principal Civil Court of original jurisdiction, but does not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. *Ibid.* s. 3 (15).

CHAPTER XLV.

SETTLED ESTATES.

By the Bengal Settled Estates Act, 1904,¹ which provides for Bengal Settled Estates. the making of family settlements by landholders in Bengal, if the right of the applicant to make the settlement is disputed by or on behalf of any person interested or claiming to be interested in the estate, the Local Government may, if it thinks fit, refer the matter in dispute to the Civil Court² for decision, before determining whether to reject the application or to grant permission to make the proposed settlement. The decision of the Civil Court is deemed to be a decree, and an appeal therefrom lies to the High Court.

The Oudh Settled Estates Act, 1917,³ contains the follow- Oudh Settled Estates. ing :—

“Section 21.—(1) No Court shall question the validity or propriety of any declaration made under section 10 (as to the property being held subject to, or exempt from, the provisions of the Act):

- (a) Except in so far as the declaration purports to affect property not included in the written permission granted by the Local Government, or
- (b) (where permission has been granted under section 6⁴ or 7⁵) except in so far as the person by whom the declaration is made shall be found not to have been entitled to and in possession of a permanent, heritable, and transferable right in the immovable property included therein, or such person was not competent to contract, or

¹ Ben. Act III of 1904, s. 8 (1).

s. 2 (p).

² This means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated: *ibid.*

³ U. P. Act V of 1917.

⁴ Permission to settle estate.

⁵ Permission to add to settled estate.

- (c) (where permission has been granted under section 8¹) unless such person shall be found not to have been entitled to and in possession of the settled estate at the date of the application under that section, or the declaration sought to be revoked was irrevocable.

"(2) Except as provided in sub-section (1) no Court shall exercise jurisdiction in or over the following matters :

- (a) the legality, propriety, or regularity of an application under sections 3,² 7,³ or 8,⁴ or of any proceeding held or order passed thereon ;
- (b) the legality, propriety, regularity, or sufficiency of any notice issued under section 5 ;
- (c) the rejection of an application under section 4,⁵ or the grant or refusal under sections 6,⁶ 7,⁷ or 8 ;⁸
- (d) the legality, propriety, or regularity of any permission granted under section 9,⁹ or of any proceeding held under section 13, sub-section (2) ;¹⁰
- (e) the sufficiency or otherwise of the reasons for the issue of a notification under section 14 ;¹¹
- (f) the exercise by the Local Government or a Collector or Commissioner of any discretion to grant, refuse, modify or cancel any sanction vested in it or him by sections 16,¹² 17,¹³ 18,¹⁴ or 19 ;¹⁵
- (g) the propriety or validity of any decision under sections 16,¹² 17,¹³ 18,¹⁴ or 19¹⁵ that any transfer is or is not for a public purpose or of a charitable or religious nature, or that any lease is or is not for an agricultural purpose."

¹ Permission to revoke a declaration.

² Application for permission to settle property.

³ Application for permission to add to the estate.

⁴ Application for permission to revoke a declaration.

⁵ Rejection by the Local Government.

⁶ Refusal by Local Government.

⁷ Refusal to permit addition to settled estate.

⁸ Refusal of permission to revoke declaration.

⁹ Grant of permission.

¹⁰ Note in register and notice in Gazette.

¹¹ Exclusion of estate from operation of Act.

¹² Transfer of settled estate for a public purpose.

¹³ Agricultural leases of settled estate.

¹⁴ Other leases of settled estate.

¹⁵ Appeals to the Commissioner.

CHAPTER XLVI.

STAMPS AND REGISTRATION OF DOCUMENTS.

By the Indian Stamp Act, 1899 (II of 1899), section 57 (1),¹ the Chief Controlling Revenue Authority may state any case referred to it by a Collector, when he feels in doubt as to the amount of duty with which any instrument is chargeable,² or otherwise coming to its notice, and refer such case with its opinion thereon : Reference to High Court.

(a) If the case arises in the territories for the time being administered by the Governor of Fort St. George in Council, or the Governor of Bombay in Council—to the High Court at Madras or Bombay, as the case may be ;

(b) if it arises in the United Provinces of Agra and Oudh,³ or in Ajmere—to the High Court at Allahabad ;

(bb) if it arises in the territories for the time being administered by the Governors of Bihar and Orissa—to the High Court at Patna ;⁴

(c) if it arises in the territories for the time being administered by the Governor of the Punjab or in British Baluchistan—to the High Court at Lahore ;

(d) if it arises in the Central Provinces—to the High Court at Bombay ;

(e) if it arises in Burma to the High Court at Rangoon ;⁵

(f) if it arises in any other part of British India—to the High Court of Fort William in Bengal.⁶

Where a Collector has certified that an instrument is duly stamped or is not chargeable with duty, a reference cannot be made.⁷

(2) Every such case shall be decided by not less than

¹ This does not apply to Court fees, s. 77.

² Act II of 1899, s. 56 (2).

³ Act VII of 1902, s. 2.

⁴ Act XIII of 1916, s. 2, Sch.

⁵ Bur. Act XI of 1922, Sch. I.

⁶ Act II of 1899, s. 57 (1).

⁷ Stamp reference (1917), 40 All., 128; Reference under Stamp Act (1901), 25 Mad., 751; *ibid.* 752.

three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.¹

Reference by
other Courts to
High Court.

If any Court, other than one of the above-mentioned Courts, feels doubt² as to the amount of duty to be paid in respect of any instrument which can be admitted in evidence on payment of the duty chargeable and of a penalty,³ the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court to which, if he were the Chief Controlling Revenue Authority, he would refer the same.⁴

When such reference is made by a Court subordinate to a District Court it shall be made through the District Court, and, when made by any subordinate Revenue Court, it shall be made through the Court immediately superior.⁵

As to the revision of decisions of Courts as to the sufficiency of stamps, see section 61 of the Act.

Registration of Documents.

Suit in case of
refusal.

By the Registration Act, 1908,⁶ section 77, where the registrar refuses to order the document to be registered under section 72⁷ or section 76,⁸ any person claiming under such document, or his representative, assign, or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office, if it be duly presented for registration within thirty days after the passing of such decree.

¹ S. 57 (2).

² Cf. *Reference under Stamp Act* (1887), 11 Mad., 38.

³ S. 35, proviso (a).

⁴ S. 60 (1).

⁵ S. 60 (3).

⁶ Act XVI of 1908.

⁷ Where the refusal is made on the ground of denial of execution.

⁸ Where the refusal is made on the ground that the property to which it relates is not situate within the district of the registrar.

CHAPTER XLVII.

TALUQDARS.

In the following enactments, which provide for the liquidation of the debts of incumbered estates of taluqdars by the Revenue authorities, suits in Civil Courts are barred or stayed, as the case may be :

Ajmere Taluqdars' Relief Regulation, 1872.¹

Ahmadabad Taluqdars Act, 1862.²

Broach and Kaira Incumbered Estates Act, 1881.³

Sindh Incumbered Estates Act, 1896.⁴

Oudh Taluqdars' Relief Act, 1870.⁵

Chota Nagpur Incumbered Estates Act, 1876.⁶

Bundelkhand Incumbered Estates Act, 1903,⁷ as amended and extended by United Provinces Act V of 1915.

Gujarat Taluqdars Act, 1888.⁸

By the Ajmere Taluqdars Regulation, 1872,⁹ on the publication of a declaration that the immovable property of a Taluqdar, Thakur, or Jagirdar is under the management of the Court of the Commissioner, all proceedings in respect to such debts or liabilities which may then be pending in any Civil Court in British India shall be barred ; and all processes, executions and attachments for, or in respect of, such debts or liabilities shall become null and void.¹⁰

By section 6 of that Regulation, as long as management in the Court of the Commissioner continues, all Civil Courts, except the Court of the Commissioner, are precluded from

¹ Reg. IV of 1872, ss. 5, 6.

² Bom. Act VI of 1862, ss. 2, 5.

³ Act XXI of 1881, s. 9.

⁴ Act XX of 1896, ss. 5, 9.

⁵ Act XXIV of 1870, ss. 4, 8.

⁶ Act VI of 1876, s. 3 ; see s. 28.

As to a Revenue Court, see *Pratap Udainath Shah Deo v. Madan Mohan*

Nath Sabi (1910), 38 Cal., 288. As to suits brought when the property is restored, see Ben. Act III of 1909, s. 12 ; Act VI of 1876, s. 12A.

⁷ U. P. Act I of 1908, ss. 9, 10.

⁸ Bom. Act VI of 1888, s. 21.

⁹ Reg IV of 1872, *ante*, p. 105.

¹⁰ *Ibid.* s. 5.

entertaining any application, petition, or suit respecting the immovable property of a Taluqdar, Thakur, or Jagirdar :

Provided that the Commissioner may refer any such case for investigation and decision by any Court subordinate to him.¹

Ahmadabad
Taluqdars.

Under the Ahmadabad Taluqdars Act, 1862, suits and appeals in respect of debts and liabilities other than incurred to Government are permanently stayed from the publication of the declaration,² and during the management taluqdars and their estates and persons are exempt from civil process.³

Broach and
Kaira.

The Broach and Kaira Incumbered Estates Act, 1881, also protects the property under management from civil process.⁴

It does not preclude the Courts in Broach and Kaira from having jurisdiction in suits relating to the succession to any immovable property brought under the operation of the Act and disposing of such suits.⁵

There is a similar provision in the Sindh Incumbered Estates Act, 1896,⁶ and in the Oudh Taluqdars' Relief Act, 1870.⁷

Broach and
Kaira Incum-
bered Estates.

In the Broach and Kaira Incumbered Estates Act, 1881 (XVI of 1881), provision is made for the stay of pending proceedings and the bar of fresh proceedings in cases in which the management has been taken over by order of the Commissioner.⁸

There is a similar provision in the Sindh Incumbered Estates Act, 1896,⁹ and in the Bundelkhand Incumbered Estates Acts, 1908.¹⁰

The Bundelkhand Incumbered Estates (Amendment) Act, 1915,¹¹ extended the operation of the Act of 1908 to other districts, and applied the provisions, referring to proprietors to persons in Mirzapur having heritable and transferable rights.¹²

A special Judge can be appointed under section 4 of the Act of 1908 by the Local Government to determine claims under that Act.

¹ Reg. IV of 1872, s. 6, *ante*, p. 105.

² Bom. Act VI of 1862, s. 2.

³ *Ibid.* s. 5.

⁴ Act XXI of 1881, s. 27.

⁵ *Ibid.* s. 37.

⁶ Act XX of 1896, s. 39.

⁷ Act XXIV of 1870, s. 25. This Act includes suits for maintenance

from immovable property.

⁸ Act XXI of 1881, s. 9.

⁹ Act XX of 1896, s. 9.

¹⁰ U. P. Act I of 1908.

¹¹ U. P. Act V of 1915.

¹² *Ibid.* s. 4, inserting s. 2A in U. P. Act I of 1908.

In case of an order being made under the Chota Nagpur Incumbered Estates Act, 1876 (VI of 1876), vesting the management of property in an officer appointed by the Commissioner, all proceedings then pending in any Civil Court in British India, or in any Revenue Court¹ in Bengal² with respect to the debts or liabilities of a holder of immovable property, other than debts due or liabilities incurred by Government shall be barred.³

Chota Nagpur
Incumbered
Estates.

Under the Chota Nagpur Incumbered Estates Amendment Act, 1909 (Bengal Act III of 1909), no suit can be brought to charge any person to whom property is restored on the debts and liabilities being paid or discharged or an arrangement made for the discharge :

(i) Upon any promise made after such restoration, to pay any debt contracted while the management of the property was vested in the manager ; or

(ii) Upon any ratification made after such restoration, or any promise or contract made while the management of the property was vested in the manager.⁴

As to the barring of debts not duly notified, see Act VI of 1876, as amended by Bengal Act III of 1909, s. 7.

Similar protection is to be found in the Sindh Incumbered Estates Act, 1896.⁵

No suit lies against Government or against any officer of Government to set aside any decision or order of a Survey Officer or Collector under sections 6 (determination of disputes) and 7 (custody and amendment of records) of the Gujarat Taluqdars Act, 1888.⁶

Gujarat
Taluqdars,
partition.

That Act extends only to the districts of Ahmadabad, Kaira, Broach and the Panch Mahals. Power is given to the Taluqdari officer as the Governor in Council appoints in this behalf to partition taluqdari estates on the application of a person who has obtained a final decree of a Court of competent jurisdiction declaring him to be entitled to a share or of a

¹ This includes a Revenue Court deciding a rent suit or executing rent decrees : *Pratap Udaimath Shah Deo v. Madan Mohan Nath Sabi* (1910), 38 Cal., 288.

² Ben. Act III of 1909, s. 4 (1).

³ Act VI of 1876, s. 3.

⁴ Ben. Act III of 1909, s. 12; Act VI of 1876, s. 12A.

⁵ Act XX of 1896, ss. 5, 9.

⁶ Bom. Act VI of 1888, s. 8.

co-sharer whose name is recorded in the settlement register prepared in accordance with the Act.¹

Such officer shall pass a decision declaring the nature and extent of the interest of the applicants and of the other co-sharers.²

An appeal lies from such decision to the District Court, as if such decision were a decree of a Court from whose decisions the District Court is authorised to hear appeals.³

No Civil Court can entertain any suit or application for the partition of a taluqdari estate. This does not affect the jurisdiction of the High Court of Bombay.⁴

¹ Bom. Act VI of 1888, ss. 10-15.

² *Ibid.* s. 15 (2).

³ *Ibid.* s. 16 (1).

⁴ *Ibid.* s. 21.

CHAPTER XLVIII.

TRUSTS AND MORTGAGES.

IN cases to which English law is applicable ¹ powers are given Trustees' and
Mortgagees'
Powers Act. to the High Courts ² by the Indian Trustees Act, 1866,³ and the 'Trustees' and Mortgagees' Powers Act, 1866.⁴

Indian Trustees Act, 1866.

A High Court may vest the estates of lunatic trustees and Lunatic
trustees and
mortgagees. mortgagees,⁵ and also release their contingent rights in immovable property,⁶ and may transfer stock⁷ or Government securities held by them on trust or mortgage.⁸

It may also make a vesting order :

(a) Where any stock or Government security is standing Lunatic
executor and
administrator. in the name of a deceased person whose executor or administrator is a lunatic or of unsound mind, or where anything in action is vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person.⁹

(b) In the case of minor trustees of immovable property Minor trustees
and mortga-
gees. and mortgagees,¹⁰ and in the case of trustees of such property who are out of the jurisdiction of the High Court,¹¹ and where it is uncertain which of several trustees survived,¹² or whether the last trustee be living or dead.¹³

¹ Acts XXVII of 1866, s. 3; XXVIII of 1866, s. 45; Bur. Act XI of 1922, Sch. II. *In re Kahandas Narrandas* (1881), 5 Bom., 154, West, J., held that the Indian Trustees Act (XXVII of 1866) applies to a Hindu Trust. See also *Lang v. Moolji* (1919), 21 Bom. L. R., 1111. There has been a decision to the same effect in Calcutta: *In re Nil-money Dey Sarkar* (1904), 32 Calc., 143, 9 C. W. N., 79.

² Acts VI of 1900, s. 47, Sch. I ;

Bur. Act XI of 1922, Sch. II.

³ Act XXVII of 1866.

⁴ Act XXVIII of 1866.

⁵ Act XXVII of 1866, s. 4.

⁶ *Ibid.* s. 5.

⁷ *Ibid.* s. 2.

⁸ *Ibid.* s. 6.

⁹ *Ibid.* s. 7.

¹⁰ *Ibid.* ss. 8, 9.

¹¹ *Ibid.* ss. 10-19.

¹² *Ibid.* s. 14.

¹³ *Ibid.* s. 15.

Where trustee dies without heir.

(c) Where a trustee of immovable property dies without an heir, or it is not known who is his heir or devisee.¹

Unborn trustees.

(d) In the case of the contingent right² of unborn trustees of immovable property.³

Refusal or neglect to convey or release.

(e) Where a trustee of immovable property neglects or refuses to convey or release the property.⁴

Power to convey in place of mortgagee.

(f) Where an heir or devisee of a mortgagee of immovable property who dies without entering into possession is out of the jurisdiction of the High Court or cannot be found; or refuses or neglects to re-convey, or where it is uncertain which of several devisees of such mortgagee was survivor, or where it is uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead, or where such mortgagee dies intestate as to such property without an heir, or dies and it is not known who is his heir or devisee.⁵

Appointment or persons to convey.

There is also a power in the above events to appoint a person to convey immovable property, or to release or dispose of a contingent right.⁶

The Court may also make a vesting order :

Trustees of stock or Government securities out of jurisdiction.

(a) where a person is jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it is uncertain whether he be living or dead, to any stock⁷ or Government securities or thing in action upon any trust or when a sole trustee cannot be found or it is uncertain whether he be living or dead.

Where trustee of stock, etc., refuses to transfer.

(b) Where a sole trustee,⁸ or one of several trustees⁹ neglects or refuses to transfer stock or Government securities, or where they stand in the name of a deceased person whose executor or administrator is out of the jurisdiction of the High Court or cannot be found, or if it be uncertain whether such executor or administrator be living or dead, or such executor or administrator neglects or refuses to transfer the stock or to receive the dividends, etc., according to the direction of the person absolutely entitled thereto.¹⁰

Minor trustees of stock, etc.

(c) In the case of minor trustees of stock or Government securities.¹¹

¹ Act XXVII of 1866, s. 16.

² *Ibid.* s. 2.

³ *Ibid.* s. 17.

⁴ *Ibid.* s. 18.

⁵ *Ibid.* s. 19.

⁶ *Ibid.* s. 20.

⁷ For definition of "stock," see Act XXVII of 1866, s. 2.

⁸ Act XXVII of 1866, s. 22.

⁹ *Ibid.* s. 23.

¹⁰ *Ibid.* s. 24.

¹¹ *Ibid.* s. 30.

There are also certain provisions for the case of a sale of immovable property by a High Court.¹

In case of a decree for specific performance of a contract concerning immovable property, or for partition or exchange thereof, or where a decree has been made for the conveyance of immovable property the Court can declare what parties are trustees, and may make a declaration as to the interests of minors or unborn persons.²

There is a power to appoint new trustees.³

Appointment
of trustees.

Trustees' and Mortgagees' Powers Act, 1866.

By section 43⁴ of the Trustees' and Mortgagees' Powers Act, 1866 (XXVIII of 1866), in cases where the English law is applicable,⁵ any trustee,⁶ executor, or administrator may apply by petition to any Judge of a High Court⁷ for the opinion, advice or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

Opinion of
Court.

Official Trustees Act, 1913.

If any property is subject to a trust which the official Trustee is prohibited from accepting under the provisions of the Act,⁸ and there is no trustee within the local limits of its ordinary or extraordinary jurisdiction willing or capable to act in the trust, the High Court of Bengal, Madras, or Bombay may, on application, make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.⁹

Appointment
of Official
Trustee to be
trustee.

A beneficiary under a trust who claims money which has

Claim to
money trans-

¹ Act XXVII of 1866, ss. 31, 32.

² *Ibid.* s. 33.

³ *Ibid.* ss. 35 to 42.

⁴ As amended by Acts VI of 1900 and XVIII of 1919. In the North-West Frontier Province the High Court at Lahore has this power, Reg. VII of 1901, s. 6 (c), *ante*, p. 223.

⁵ *Ante*, p. 483, n. 1.

⁶ These words are repealed in places to which the Indian Trusts Act (II of 1882) is applicable, see *post*, p. 486.

⁷ See Bur. Act XI of 1922, Sch. II.

⁸ These include (a) a trust under any composition or scheme of arrangement for the benefit of creditors, or of an estate known or believed by the Official Trustee to be insolvent; (b) save as provided by rules made under the Act, a trust for a religious purpose, or a trust which involves the management or carrying on of any business. The Official Trustee cannot be appointed along with any other trustee: Act II of 1913, s. 7.

⁹ Act II of 1913, s. 10 (1).

ferred to
Government.

been transferred to the account of the Government of India in consequence of the Official Trustee being unable to trace the person entitled to receive the same, may apply to the High Court against the Secretary of State for India in Council, and such Court may make an order for the payment of the money.¹

Vesting orders.

The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof.²

Indian Trust Act, 1882.

Indian Trust
Act.

The Indian Trust Act (II of 1882) extends to Assam, Bombay, Coorg, Madras Presidency, North-West Frontier Province, Punjab, Rangoon, and the United Provinces, and may be extended to other Provinces by notification.³

By that Act a principal Civil Court of original jurisdiction may—

- (1) authorise the extension within which a trustee is directed to sell property ;⁴
- (2) exempt a trustee from the payment of interest in the case of a breach of trust ;⁵
- (8) sanction the incurring of expenses by a trustee ;⁶
- (4) give an opinion, advice, or direction on any present questions respecting the management or administration of the trust property other than questions of details, difficulty, or importance, not proper in the opinion of the Court for summary disposal ;⁷
- (5) sanction the lease of trust property for a term exceeding twenty-one years ;⁸
- (6) sanction the application of capital for the maintenance, education, or advancement in life of a minor ;⁹
- (7) sanction the exercise of powers otherwise than in conformity with a decree ;¹⁰
- (8) sanction the renunciation of a trust ;¹¹
- (9) control the exercise of a discretionary power conferred upon a trustee ;¹²

¹ Act II of 1918, ss. 23, 24.

² *Ibid.* s. 25.

³ Act II of 1882, s. 1.

⁴ *Ibid.* s. 22.

⁵ *Ibid.* s. 23.

⁶ S. 32.

⁷ S. 34.

⁸ S. 36.

⁹ S. 41.

¹⁰ S. 45.

¹¹ S. 46.

¹² S. 49.

- (10) sanction the sale or lease or mortgage of any portion of the trust property to a trustee or to a person who has recently ceased to be a trustee; ¹
- (11) discharge a trustee; ²
- (12) consent to retiring trustees appointing new trustees; ³
- (13) appoint new trustees. ⁴

It has been held ⁵ that a refusal to dismiss a trustee is not appeal-
able. Similar reasons would exclude an appeal in case of other orders
under the Indian Trust Act.

¹ Act II of 1882, s. 53.

⁴ S. 74.

² Ss. 71, 72.

³ *Wilson v. MacAffee* (1896), 19

⁵ S. 73.

All., 131.

CHAPTER XLIX.

PUBLIC RELIGIOUS AND CHARITABLE TRUSTS.

Religious
Endowment
Act.

As to certain suits in respect to charitable and religious trusts, see Act V of 1908, s. 92, *ante*, pp. 329, 330.

The Religious Endowments Act (XX of 1863) is in force throughout British India except in the Presidency towns and in the Bombay Presidency, where it is in force in Kanara only.

The Act applies to all public¹ religious endowments for the support of which lands have been granted by preceding Governments of India and by individuals, whether they have been taken under the control of the Board of Revenue or not,² and whether they existed at the time of the passing of the Act or have been subsequently created.³ It applies to religious endowments which might have been taken under the control of the above Regulations, if such Regulations had remained in force,⁴ and whether or not they were in existence at the time of the repeal of such Regulations.⁵

The Act has no application to private trusts,⁶ and only applies to certain religious trusts and endowments which had been or might be under the management of the Government.⁷

Dispute as to
succession to

When a dispute arises as to the succession to the office of

¹ See *Budree Das Mukim v. Chooni Lal Johurry* (1906), 38 Calq., 789; 10 C. W. N., 581.

² *Jan Ali v. Ram Nath Mundul* (1881), 8 Calc., 32; 9 C. L. R., 438; *Sheoratan Kunwari v. Ram Pargash* (1896), 18 All., 227; *Mahomed Athar v. Ramjan Khan* (1907), 34 Calc., 587.

³ *Venkatachala Pillai v. Talug Board, Saidapet* (1911), 34 Mad., 375.

⁴ See *Saturluri Seetaramanuja Charyulu v. Nanduri Seetapati* (1902), 26 Mad., 166, explaining *Muthu v. Gangathara* (1893), 17 Mad., 95; *Mahomed Athar v. Ramjan Khan* (1907), 34 Calc., 587.

⁵ *Sivayya v. Rami Reddi* (1899), 22 Mad., 228; *Venkatachala Pillai v. Talug Board, Saidapet* (1911), 34 Mad., 375.

⁶ See *Sathappayyar v. Periasami* (1890), 14 Mad., 1 (endowment for family of guru); *Ashgar Ali v. Delroos Banoo Begum* (1877), 3 Calc., 325; s.c. in Court below, *Delroos Banoo Begum v. Ashgur Ally Khan (Nawab Syud)* (1875), 15 B. L. R., 167; 23 W. R. C. R., 453; *Protap Chandra Misser v. Brojonath Misser* (1891), 19 Calc., 275 (endowment for family idol).

⁷ *Kalee Churn Giri v. Golabi* (1878), 2 C. L. R., 129, s. p. 181.

any trustee, manager, or superintendent to whom the property has been transferred by Government,¹ the Civil Court² may, at the instance of any person interested in the mosque, temple, or religious establishment or in the performance of the worship or of the service thereof, or of the trusts relating thereto, appoint a manager³ to act until some other person has by suit established his right of succession to such office.⁴

No appeal lies from an order made under this provision,⁵ but a High Court can revise such order.⁶

By section 7 the Local Government was required once for all to appoint committees.

In case of a vacancy in the Committee not being filled up within three months after it has occurred, the Civil Court,⁷ on the application of any person whatever, may appoint a person to fill the vacancy, or may order the vacancy to be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply, and if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.⁸

There is no appeal from the exercise of the power given to the District Judge by this section,⁹ but the matter can be dealt with by the High Court on revision.

‘Section 14. Any person or persons interested¹⁰ in any

Persons interested may

¹ S. 4. *Sheomandan Gir (Mohunt) v. Dhupan Upadhyaya* (1910), 14 C. W. N., 1104; *Ittuni Panikkar v. Irani Nambudripad* (1881), 3 Mad., 401; *Gopala Ayyar v. Arunachallam Chetty* (1902), 26 Mad., 85.

² That is the principal Civil Court of original jurisdiction in the district, in which the mosque, temple or other religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted on application made under the provisions of the Act: s. 2.

³ This includes a temporary manager: *Basdeo Gir v. Pritam Gir* (1920), 43 All., 50.

⁴ S. 5.

⁵ *Somasundara Mudaliar v. Vythilinga Mudaliar* (1896), 19 Mad., 285; *Basdeo Gir v. Pritam Gir* (1920), 43

All., 50; *contra Sullan Akeni Sahib v. Bava Malimiyar (Shaik)* (1897), 4 Mad., 295.

⁶ *Gopala Ayyar v. Arunachallam Chetty* (1902), 26 Mad., 85. Cf. *Basdeo Gir v. Pritam Gir* (1920), 43 All., 50.

⁷ Above, note 2.

⁸ S. 10. As to the construction of this section, see *Vasudeva Aiyar v. Negapatam Devasthanam Committee* (1918), 38 Mad., 594, upheld on appeal, *Balakrishna Udayar v. Vasudeva Aiyar* (1917), 44 I. A., 261; 40 Mad., 798; 22 C. W. N., 50; 19 Bom. L. R., 715.

⁹ *Meenakshi Naidoo v. Subramaniya Sastri* (1887), 14 I. A., 160; 11 Mad., 26.

¹⁰ As to the nature of the interest entitling a person to sue, see s. 15.

singly sue in
case of breach
of trust, etc.

mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or of the trusts relating thereto may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustees, manager, or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty committed by such trustee, manager, superintendent, or member of such committee in respect of the trusts vested in or confided to them respectively, and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee, and may decree damages and costs against such trustee, manager, superintendent, or member of a committee, and may also direct the removal of such trustee, manager, superintendent, or member of a committee.”¹

As to a sanction for a suit under this Act, see section 18.

This Act, while it empowered persons to sue whose right to sue independently of the Act may be doubtful, did not deprive any one of the right to sue, which he may have independently of the Act.²

Power to apply
in respect of
trusts of
charitable or
religious
nature.

By section 3 of the Charitable and Religious Trusts, 1920 (Act XIV of 1920), any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply to the District Judge³ within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely :

(1) Directing the trustee to furnish the petitioners through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management, and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters ; and

(2) directing that the accounts of the trust shall be examined and audited :

¹ For cases under this section, see Trevelyan's Hindu Law, 2nd edn., pp. 590-598. *Hansraj Laddasheet v. Anant Padmünabh* (1918), 42 Bom., 742 ; 20 Bom. L. R., 954.

² *Kalub Hossein (Hajee) v. Mehrum Beebee (Mussumat)* (1873), 4 N. W. P., 155, at p. 158 ; *Narayana Ayyar v.*

Kumarasami Mudaliar (1899), 23 Mad., 537 ; *Puddolabh Roy v. Ram Gopal Chatterjee* (1882), 9 Cal., 138 ; 11 C. L. R., 88.

³ This includes the High Court in the exercise of its ordinary original civil jurisdiction : s. 2.

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

As to the effect of a denial of the existence of the trust, see section 5.

A trustee of an express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court of the District Judge, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice, or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice, or direction, as the case may be, thereon :

Powers of trustee to apply for directions.

Provided that the Court shall not be bound to give such opinion, advice, or direction on any question which it considers to be a question not proper for summary disposal.¹

No petition shall be entertained in any of the following circumstances, namely :

Savings.

(a) If a suit instituted under the provisions of section 92 of the Code of Civil Procedure, 1908,² is pending in respect of the trust in question ;

(b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator - General, the Official Trustee, or any society registered under the Societies Registration Act, 1860 ;³ or

(c) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.⁴

No appeal lies from any order passed or against any opinion, advice, or direction given under the Act.⁵

By the Coorg Temple Funds Management Regulation (IV Coorg. of 1892), which applies to certain specified temples and institutions and such other temples and institutions as the Chief Commissioner with the previous sanction of the Governor-General in Council may direct, the District Judge has power

¹ Act XIV of 1920, s. 7 (1).

⁴ S. 9.

² Act V of 1908, *ante*, p. 329.

⁵ S. 12.

³ Act XXI of 1860, *ante*, p. 422.

to remove members of committees in certain cases,¹ and has power to call for accounts and to have them audited.²

Suits under this Regulation, viz. against members of committee, or managers for misfeasance, breach of trust, or neglect of duty can be brought in the District Court³ with leave of the District Judge.⁴

The District Judge can refer suits or proceedings under the Regulation to arbitration.⁵

Legal
proceedings.

The Committee may institute legal proceedings in any Civil or Criminal Court in the name of its President, and any person interested in any of the said temples and institutions, or in the performance of the worship or service thereof, or of the trusts relating thereto may sue in the District Court the committee in the name of its President or any particular member or members thereof by name or the manager or managers for any misfeasance, breach of trust, or neglect of duty. The District Court may direct specific performance of any act by the Committee, and may decree damages and may also direct the removal of any member or members, manager or managers; and no person removed by any such order shall be afterwards capable of being elected a member of committee or appointed a manager without the permission in writing of the District Judge.⁶

Arbitration.

The District Judge may, with or without the consent of either party, order a matter in dispute in any civil suit or proceeding under the Regulation to be referred to arbitration.⁷

Leave for
institution of
suits.

No suit can be entertained under the Regulation except in accordance with an order of the District Court to be made upon a preliminary application to that Court for leave to institute such suit.⁸

Reference of
disputes to
District Judge.

Except as above, all disputes arising in respect of any matter provided for by the Regulation or by the rules made under it shall be referred to the District Judge, whose decision thereon is subject to appeal to the Judicial Commissioner within the prescribed period, and subject thereto is final.⁹

Appeal.

¹ Reg. IV of 1892, s. 8.

² *Ibid.* s. 17.

³ *Ibid.* s. 18.

⁴ *Ibid.* s. 21.

⁵ *Ibid.* s. 20.

⁶ *Ibid.* s. 18.

⁷ *Ibid.* s. 19.

⁸ *Ibid.* s. 21.

⁹ *Ibid.* s. 24.

As to the powers of the Bengal Board of Revenue with regard to endowment and escheats, see Bengal Regulation XIX of 1810. ^{Bengal Board of Revenue.}

As to the powers of the Madras Board of Revenue to deal with endowments and escheats, see Madras Regulation VII of 1817. This Regulation supplements the existing law. ^{Madras Board of Revenue.}

In questions which are governed by Mahomedan law the superior Civil Court in a district is vested, generally speaking, with the powers exercisable under Mahomedan law by the Kazi, as, for instance, it can in a proper case sanction the alienation of *wakf* property. ^{Mahomedan Law.}

¹ *Ponnambala Mudaliyar v. Varaguna Rama Pandia* (1872), 7 Mad. H. C., 117.

beer (1898), 3 C. W. N., 158, followed *In the matter of Woozatunnessa Bibee* (1908), 36 Calc., 21.

² *Shama Churn Roy v. Abdul Ka-*

CHAPTER L.

COURTS OF WARDS.

Constitution of Courts of Wards. OUTSIDE the Presidency towns power has been given to the Revenue authorities, under the name of Courts of Wards, to manage the property of disqualified proprietors of estates paying land revenue to Government.

There are separate Courts of Wards in Bengal, Madras, Bombay, the United Provinces, Bihar and Orissa, the Punjab, the Central Provinces and Ajmere, and Merwara.

Exempt from interference by Civil Courts. Courts of Wards are not liable to be sued in respect of acts done by them within their powers, and the Civil Courts cannot in any way interfere with the exercise of the powers entrusted by the Legislature to Courts of Wards.¹

As to the power of a Court under section 45 of the Specific Relief (Act I of 1877) to order a Court of Wards to do a specific act, see *Kesho Prasad Singh v. Board of Revenue* (1911), 38 Calc., 553; 15 C. W. N., 503.

The Succession (Property Protection) Act, 1841, cannot be put in force for the purpose of disturbing the possession of a Court of Wards.²

Ouster of jurisdiction of Civil Court. In some cases the exercise of their jurisdiction by the Civil Courts is restricted by powers given to the Courts of Wards by the Acts by which they are governed.

Except that in Bombay the previous consent of the District Court is necessary,³ a Court of Wards having jurisdiction can disregard the appointment of a guardian of the person, or property, of a minor by any Civil Court, other than a High Court, and, in spite of such appointment, it can take

¹ *Collector of Beerbhoom v. Mundaiknee Debia*, W. R., 1864, C. R., 382; 1 W. R. M. A., 7; *Shurut Soonduree Debia (Ranee) v. Collector of Mymensingh* (1867), 7 W. R. C. R., 221; *Re Gujadhur Pershad* (1866),

5 W. R. M. A., 41; Mad. Act I of 1902, s. 48; U. P. Act IV of 1912, s. 53; Bom. Act I of 1905, s. 45.

² Act XIX of 1841, s. 16, *ante*, pp. 396, 397.

³ Bom. Act I of 1905, s. 7.

upon itself the care of the minor's person and property in accordance with law.¹

The Civil Court cannot under the Guardians and Wards Act appoint a guardian of the property of a minor who is under the superintendence of a Court of Wards, or appoint or declare a guardian of the person of the minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.²

Ajmere.

The Ajmere Government Wards Regulation, 1888,³ contains the following provisions :

A declaration made by the Chief Commissioner that a person is incapable of managing his affairs is final and cannot be questioned in a Civil Court.⁴ Declaration by Chief Commissioner.

"Section 9. When the Court of Wards has, with the previous sanction of the Chief Commissioner, assumed the superintendence of the property of any person, or of his person and property, its authority shall not be contested in any Civil Court on the ground that he was not or is not a landholder, or was not or is not a minor." Contest as to whether ward is landholder or minor.

When any question arises whether the superintendence of the Court of Wards should be withdrawn from any person or property, or both, on the ground that the ward has attained majority, or from any property when the ward's physical defect or infirmity is removed or ceases, the decision of the Chief Commissioner thereon is final, and cannot be questioned in a Civil Court.⁵ Withdrawal of superintendence.

"Section 25. An appeal shall lie from every order of the Court of Wards under this Regulation to the Chief Commissioner." Appeals.

"Section 27. The exercise of any discretion conferred on the Court of Wards or the Chief Commissioner by this Regulation shall not be called in question in any Civil Court." Discretion of Commissioner.

¹ Act VIII of 1890, ss. 8 and 41.
See *ante*, chap. xxxii. *Madhusudan Sing v. Collector of Midnapore* (1865), B. L. R. F. B. R., 199; 8 W. R. C. R., 83.

² Act VIII of 1890, s. 19.

³ Reg. I of 1888.

⁴ S. 7 (2).

⁵ S. 24 (2).

Bengal.

The Bengal Court of Wards Act, 1879,¹ as amended contains the following :

Application by
Civil Court to
Court of
Wards to take
charge.

"Section 10.² Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890,³ appointing a guardian of the person or property of a minor, or both ;

"Whenever a Civil Court removes, under section 39 of the same Act, the guardian of a minor ; or

"Whenever a person has been adjudged under Act IV of 1912, to be of unsound mind and incapable of managing his affairs, if the property of such minor or disqualified proprietor consists, in whole or in part, of land, or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor, and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so."

Nothing contained in sections 78 to 81⁴ of the Indian Lunacy Act, 1912, shall be held to apply to persons or property under the charge of the Court of Wards.⁵

Stay of
proceedings.

A Civil Court may on the application of the Court of Wards stay execution of process against the immovable property, rents, or crops belonging to the ward.⁶

Suit in Civil
Court.

Suits for the recovery of claims against a ward or his property lie in a Civil Court notwithstanding, in the case of Western Bengal, the claim has been submitted to the Court of Wards,⁷ or, in Eastern Bengal, the claim has been entered in the schedule framed under section 10A, sub-section (4).⁸

Dispute as to
succession to
property of
ward.

Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain charge of the same until the right of possession of the claimant has

¹ Ben. Act IX of 1879.

² As amended by Act IV of 1892, s. 6.

³ Act VIII of 1890, *entire*, p. 408.

⁴ As to managers and guardians.

⁵ Act IV of 1912.

⁶ Ben. Act IX of 1879, s. 10c, in-

serted by Ben. Act I of 1906, s. 8 ;
E. B. and A. Act III of 1907, s. 3.

⁷ S. 10D, inserted by Ben. Act I of 1906, s. 3.

⁸ S. 10E, inserted by E. B. and A. Act III of 1907, s. 3.

been determined under Bengal Act VII of 1876¹ (or in cases which were subject to the Court of Wards in Eastern Bengal and Assam, under the Assam Land and Revenue Regulation (I of 1886),² until the dispute has been determined by a competent Civil Court).³

After the death of a proprietor the Court of Wards cannot retain charge on account of any debt or liability which has been declared by a competent Civil Court not to be binding on his representative.⁴

"Section 31. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction⁵ of the High Court is reported by the Collector to be of unsound mind and incapable of managing his affairs, the Court of Wards may order the Collector making such report, or such other Collector as the Court may appoint to apply, in pursuance of the provisions of the Indian Lunacy Act, 1912,⁶ to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

"Section 32. If a sole proprietor of an estate who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court is reported by the Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the district within which such person may be residing; and upon such Collector so applying, such Civil Court shall inquire into and determine the question as to the alleged incapacity.

"Section 33. If a sole proprietor of an estate who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Governor of Bengal or the Governor of Bihar and Orissa, or the Governor of Assam, shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness

Debts not binding on representative.

Inquiry in case of lunatic.

Civil Court to make inquiry regarding disqualification on ground of physical defect or infirmity.

Proceedings in case of physical defect or infirmity when proprietor in jurisdiction of High Court.

¹ Bengal Land Registration Act, 1876, *post*, pp. 623, 624.

² See E. B. and A. Act III of 1907, s. 4.

³ Ben. Act IX of 1879, s. 18.

T. C.J.I.

⁴ S. 18A, inserted by Ben. Act I of 1906, s. 4; E. B. and A. Act III of 1907, s. 5.

⁵ *Ante*, p. 58.

⁶ Act IV of 1912, *ante*, chap. xi.

of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the Twenty-four Parganas, or to such other Civil Court as the Governor, on application made to him by the Collector in that behalf, may determine."

Bombay.

The Bombay Court of Wards Act, 1905,¹ contains the following:

Superintendence not to be assumed where guardian appointed except with consent of District Court.

"Section 7. The Court of Wards shall not assume the superintendence of the property, or of the person and property, of any minor of whose property, or of whose person and property—

(a) a guardian has been appointed by will or other instrument, or

(b) a guardian other than an officer of Government has been appointed or declared under section 7, sub-section (1), of the Guardians and Wards Act, 1890,² except with the previous consent of the District Court."

Temporary custody of heirs and protection of property in certain cases.

"Section 10.—(1) Whenever the Collector receives information that any landholder,³ or pension holder⁴ is or should be disqualified under sub-section (1) of section 5, or that any landholder or pension holder has died, and that his heir is, or should be, so disqualified, he may apply to the District Court, and the District Court may authorise the Court of Wards to—

¹ Bom. Act I of 1905.

² Act VIII of 1890.

³ "Landholder" means, in the case of minors and persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs, a holder as defined in the Bombay Land Revenue Code, 1879 (Bom. Act V of 1879, s. 3 (11)), viz. the person in whom a right to hold property is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public; it includes a mortgagee vested with a right of possession: Bom. Act I of 1905, s. 2 (b) (i); and (ii) in all other cases, a zamindar, jagirdar,

saranjamdar, inamdar, taluqdar, malek and a khot, and any other person not hereinbefore specified who is interested in land and whom the Governor in Council has declared on account of the extent and value of his interest to be a landholder for the purposes of this Act: Bom. Act II of 1913, s. 2.

⁴ Bom. Act II of 1913, s. 4 (1). "Pension holder" shall mean a person lawfully entitled to the whole or part of a pension a cash-allowance granted or continued by Government on political considerations or of an hereditary pension or cash allowance: *Ibid.* s. 2 (bb).

- (a) take such steps and make such order for the temporary custody and protection of the property as the Court of Wards thinks fit; and
- (b) when the landholder or pension holder or heir is a minor, direct that the person (if any) having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as the Court of Wards may appoint, and make such order for the temporary custody and protection of the minor as the Court of Wards thinks fit:

provided that, where the minor is a female and belongs to a class, the females of which do not usually appear in public, her production shall be required only in accordance with the manners and customs of the country.

“(3) No appeal shall lie from any order of authorisation under sub-section (1), except in the case of a landholder or pensioner disqualified under section 5, sub-section (1), clause (a).”¹

“Section 36.—(1) Where any question arises as between two or more Government wards of such a nature that an adjudication upon it by a Civil Court is expedient, it shall be lawful for the Court of Wards, acting through the Collector of the district in which a case might have been stated for the opinion of the Civil Court with regard to such matter under Order XXXVI, Rule I, of the Code of Civil Procedure,² to file in the Civil Court having jurisdiction a statement containing the point or points for determination.”

Adjudication of civil disputes between two or more Government wards.

The Civil Court shall dispose of the case in accordance with the rules in the Code of Civil Procedure for the trial of cases stated for the opinion of the Court.³

By the Bombay Court of Wards Act, 1905,⁴ no suit can be brought in any Civil Court in respect of the exercise of any discretion conferred by the Act.

Bar of suits.

Provided, *firstly*, that any person evicted under section 28 of the Act may sue for restitution, and

Provided, *secondly*, that any tenant from whom an arrear

¹ That is in the case of minors.

² Act V of 1908.

³ Bombay Act I of 1905, s. 36 (2).

⁴ *Ibid.* s. 45.

of rent has been recovered under section 29 of the Act, may sue for recovery of the amount, or any part thereof, so recovered.

Withdrawal of
superintend-
ence of Court
of Wards.

Section 40 requires the Court of Wards to withdraw its superintendence as soon as, in the opinion of the District Court, certified to the Court of Wards—

- (a) in the case of a person disqualified under clause (a) of sub-section (1) of section 5, he attains or has attained his majority;
- (b) in the case of a female disqualified under clause (b) of the same sub-section, she is fit to manage her own property;
- (c) in the case of a person disqualified under clause (c) of the same section, he is fit to manage his own property;
- (d) in the case of a person disqualified under clause (d) of the same sub-section, he ceases to be of unsound mind and incapable of managing his affairs; and
- (e) where it was assumed under section 4, sub-section (1), in the case of a family which was undivided according to Hindu law, any co-sharer ceases to be disqualified under sub-section (1) of section 5.

See this section as to the cases where the Court of Wards may retain superintendence with the sanction of the Governor in Council.

Bar of suits.

No suit can be brought in any Civil Court in respect of any discretion conferred by this Act.¹

Central Provinces.

Suits.

By the Central Provinces Court of Wards Act, 1899,² no suit shall be brought in any Civil Court in respect of any declaration made by the Local Government declaring persons incapable of managing their property,³ or of an order made by the Local Government ordering the Court of Wards to assume superintendence of property on the application of the proprietor.⁴

“Section 11. No suit shall be brought in any Civil Court to contest the authority of the Court of Wards in respect of the property, or of the person and property, of any person

¹ S. 45.

² Act XXIV of 1899.

³ *Ibid.* s. 5 (2).

⁴ *Ibid.* s. 6 (2).

under that Act, on the ground that such person was not or is not a landholder or a minor."¹

"Section 14. If a Civil Court has directed any process of execution to issue against any immovable property of a Government ward or the rents thereof or any crops standing thereon, the Court may, at any time within one year after the issue of a notification under section 10, apply to the Civil Court to stay proceedings in the matter of such process, and the Civil Court may on such terms regarding interest or compensation for delay as may appear just and reasonable, stay such proceedings accordingly."

Stay of proceedings of Civil Court.

"Section 89. No suit shall be brought in any Civil Court in respect of any discretion conferred by this Act."

Exercise of discretion.

Madras.

By the Madras Court of Wards Act, 1902, no declaration made by the Local Government declaring a proprietor disqualified and directing the Court of Wards to assume superintendence, or on the application of the proprietor directing the Court of Wards to assume superintendence, and no act done in the exercise of discretionary power conferred by that Act shall be questioned in any Civil Court.²

The Madras Court of Wards Act, 1902, provides that nothing in that Act shall be construed to affect or in any way to derogate from any power possessed by the High Court of Madras over the persons or estates of infants, idiots and lunatics.³

Jurisdiction of High Court saved.

When any question arises as between two or more wards of such a nature that an adjudication upon it by a Civil Court is expedient, the Court of Wards, acting through the Collector of the district in which a case might have been stated for the opinion of the Civil Court with regard to such matter under Order 36, Rule 1, of the Code of Civil Procedure,⁴ may file, in the Civil Court having jurisdiction, a statement containing the point or points for determination.⁵

Adjudication of civil disputes between two or more wards.

The Civil Court may, if it thinks fit, amend the case so stated, and shall then proceed to hear and dispose of the case in the manner provided in Order 36 of the Code of Civil

¹ Act XXIV of 1899, s. 11.

² Mad. Act I of 1902, s. 48.

³ *Ibid.* s. 3.

⁴ Act V of 1908.

⁵ Mad. Act I of 1902, s. 58 (1).

Procedure¹ for the hearing and disposal of cases stated for opinion under that order.²

Punjab.

The Punjab Court of Wards Act, 1903,³ which is in force in the Punjab and in the North-West Frontier Province,⁴ contains the following:

Finality of orders of assumption of charge.

Every order made by the Court of Wards, assuming under sections 6, 7, and 8 respectively the superintendence of the person or property, or both, of any person, is final, and cannot be called in question in any Court of Law.⁵

Decree.

A claim based upon a decree of a competent Court must be recognised by the Deputy Commissioner.⁶

Certificate.

On the publication of a notice to claimants, all suits and proceedings in execution of a decree against a ward shall be stayed until the plaintiff or decree holder files a certificate that the claim has been notified.⁷

Fresh proceedings cannot be instituted without a certificate that the claim has been notified.

Saving of right to sue in certain cases.

Subject to these conditions, a claimant may bring or prosecute any suit, in any competent Court, in respect of any claim which has been duly notified to the Deputy Commissioner, and which has, whether in whole or in part, been disallowed by him; but no suit shall at any time be brought or be maintainable in respect of any claim which has not been so notified, or to set aside or modify the order of a Deputy Commissioner (if any) fixing a date for the payment of such claim, or regulating the order in which claims against the ward or properties under the superintendence of the Court of Wards shall be paid.⁸

As to the stay of suits and proceedings in execution of a decree against a ward, see section 31.

Bar of suits and proceedings.

No suit shall be brought in any Civil Court in respect of the exercise of any discretion conferred by this Act.⁹

¹ Act V of 1908.

² Mad. Act I of 1902, s. 53 (3). This procedure is optional. In some cases the ordinary procedure may be appropriate, but there would apparently have to be separate representatives in spite of the provisions of s. 50.

Punj. Act II of 1908.

Reg. V of 1904, s. 2.

Punj. Act II of 1903, s. 10.

S. 31 (1).

S. 31 (2).

S. 32 (1).

S. 52 (1).

As to suits against any officer of Government or any guardian, manager, or servant appointed by and discharging his duties under a Court of Wards for anything done by him in good faith under this Act, see *ante*, p. 809.¹

United Provinces.

By the United Provinces Court of Wards Act, 1912, no Declaration. declaration made by the Local Government declaring a proprietor disqualified, or by the Court of Wards on the application of a proprietor declaring that it is expedient to undertake the management shall be questioned in any Civil Court.²

The same Act provides³ that the exercise of any discretion conferred on the Local Government or the Court of Wards by that Act shall not be questioned by any Civil Court. Civil Court cannot question discretion.

Where any question arises as between two or more wards of such nature that an adjudication upon it by a Civil Court is expedient, the Court of Wards may appoint a representative on behalf of each ward. The representative so appointed shall prepare a statement containing the point or points for determination, and shall on behalf of such wards file the statement in a Civil Court having jurisdiction in the form of a case for the opinion of such Court.⁴ Statement of case for opinion of Civil Court.

The Civil Court shall then proceed to hear and dispose of the case in the manner prescribed by the Code of Civil Procedure, 1908, for the hearing and disposing of suits.⁵

As to the prosecution of claims in a Civil Court, see section 20.

As to the stay of execution in a Civil Court against immovable property of the ward, see section 23.

¹ S. 52 (2).

² U. P. Act IV of 1912, s. 11.

³ *Ibid.* s. 53 (1).

⁴ *Ibid.* s. 57 (1).

⁵ *Ibid.* s. 57 (2).

PART VI.

SPECIAL TRIBUNALS.

As to the exclusion of the jurisdiction of the ordinary Civil Courts by jurisdiction conferred upon special tribunals, see *ante*, pp. 300, 301.

As to the necessity for proving the conditions under which a special tribunal may be established under the particular enactment, see *Secretary of State v. Maharaja of Tippera* (1916), 48 I. A., 308; 44 Calc., 328; 21 C. W. N., 291; 18 Bom. L. R., 1027.

As to the case where the special tribunal does not adjudicate, see *Ganesh Mahadev v. Secretary of State* (1918), 48 Bom., 221; 21 Bom. L. R., 27.

CHAPTER LI.

ACQUISITION OF LAND FOR PUBLIC PURPOSES.

Land Acquisition Act.

THE compulsory acquisition of land and of rights in land for public purposes is dealt with by the Land Acquisition Act, 1894,¹ which has been declared to be in force in the Santhal Parganas,² and in Upper Burma except the Shan States.³

Although proceedings have been taken, the parties can agree as to the price.⁴

Questions to be determined.

By that Act the Court, that is to say, a principal Civil Court of original jurisdiction, unless the Local Government has appointed a special judicial officer within specified local limits to perform the functions of the Court under the Act,⁵ can, on a reference from the Collector,⁶ determine objections to the measurement of the land, the amount of the com-

¹ Act I of 1894.

² Reg. III of 1872, s. 3, Sch.

³ Act XIII of 1898, s. 4, Sch. I.

⁴ *Fort Press Company v. Municipal Corporation of Bombay* (1922), 49 I. A., 331; 46 Bom., 767; 24 Bom., L. R.,

1228.

⁵ S. 2 (d).

⁶ *British India Steam Navigation Co. v. Secretary of State* (1910), 38 Calc., 280; 15 C. W. N., 87.

pensation,¹ the persons to whom it is payable or the apportionment of the compensation among the persons interested.²

The expression "public purposes" is not defined. It includes:

(a) the provision of village sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision;³

Public purposes.
Village sites.

(b) the establishment of a chain of posts under clause (c) of sub-section (1) of the Indian Salt Act, 1882;⁴

(c) the acquisition of land for a lessee under section 14 of the Upper Burma Rubies Regulation (XII of 1887);⁵

(d) the construction of new water courses in the Bombay Presidency;⁶

(e) for the purposes of the Bombay Local Boards Act, 1884,⁷ of the Central Provinces Local Self-Government Act, 1888,⁸ the Madras Local Boards Act, 1884,⁹ the Punjab District Boards Amendment Act, 1906,¹⁰ the Ajmere Municipalities Regulation, 1886,¹¹ of the Bengal Municipalities Act, 1876,¹² and 1884,¹³ the Calcutta Municipality Act, 1899,¹⁴ the Bombay District Municipal Act, 1901,¹⁵ the City of Bombay Municipality Act, 1888,¹⁶ the Burma Municipal Act, 1898,¹⁷ the Central Provinces Municipal Act, 1908,¹⁸ the Coorg Municipal Regulation, 1907,¹⁹ the Bihar and Orissa Municipal Act, 1922,²⁰ the Madras District Municipalities Act, 1920,²¹ the Madras City Municipal Act, 1919,²² the Punjab Municipal Act, 1911,²³ United Provinces Municipalities Act, 1916;²⁴

(f) the Aden Port Trust Act, 1888,²⁵ the Bombay Port Trust Act, 1879,²⁶ the Calcutta Port Act, 1890,²⁷ the Madras Port Trust Act, 1905,²⁸ the Rangoon Port Act, 1905,²⁹ the Chittagong Port Act, 1914,³⁰ the Burma Canals Act, 1905,³¹ the Punjab Minor Canals Act, 1905,³² the Canals.

¹ As to the case of mines or minerals under the acquired land, see Act XVIII of 1885; *post*, p. 508.

² S. 18 (1). As to the matters to be considered by the Court, see ss. 23, 24.

³ S. 3 (f).

⁴ Act XII of 1882, s. 8A, inserted by Act XIX of 1890, s. 2.

⁵ Reg. XII of 1887, s. 16, as amended by Act XIII of 1898, Sch. III.

⁶ Bom. Act VII of 1879, s. 19.

⁷ Bom. Act I of 1884, s. 72.

⁸ Act I of 1883, s. 37.

⁹ Mad. Act V of 1884, s. 153.

¹⁰ Punj. Act II of 1906, s. 61.

¹¹ Reg. V of 1886, s. 149.

¹² Ben. Act V of 1876, s. 37.

¹³ Ben. Act III of 1884, s. 35.

¹⁴ Ben. Act III of 1899, ss. 357, 556.

See *Amulya Chandra Banerjee v.*

Corporation of Calcutta (1922), 49 I. A., 255; 49 Cal., 838; 27 C. W. N., 125 (the erection of a *dharamsala* at the expense of a private benefactor).

¹⁵ Bom. Act III of 1901, s. 41.

¹⁶ Bom. Act III of 1888, s. 91.

¹⁷ Bur. Act III of 1898, s. 41.

¹⁸ Act XVI of 1908, s. 58.

¹⁹ Reg. II of 1907, s. 52.

²⁰ B. & O. Act VII of 1922, s. 68.

²¹ Mad. Act V of 1920, ss. 67, 165.

²² Mad. Act IV of 1919, ss. 74, 76.

²³ Punj. Act III of 1911, s. 58.

²⁴ U. P. Act II of 1916, s. 35.

²⁵ Bom. Act V of 1888, s. 24.

²⁶ Bom. Act VI of 1879, s. 27.

²⁷ Ben. Act III of 1890, s. 58.

²⁸ Mad. Act II of 1905, s. 27.

²⁹ Bur. Act IV of 1905, s. 82.

³⁰ Ben. Act V of 1914, s. 72.

³¹ Bur. Act XI of 1905, ss. 19, 20.

³² Punj. Act III of 1905, s. 55.

Embankments. Bengal Embankments Acts, 1878,¹ and 1882,² the Bengal Irrigation Act, 1876,³ the Bihar and Orissa Private Irrigation Works Act, 1922,⁴ the Bihar and Orissa Minor Irrigation Works Act, 1922,⁵ the Drainage. Bengal Drainage Act, 1880,⁶ the Indian Forest Act, 1878,⁷ the Madras Forests. Forest Act, 1882,⁸ the Burma Forests Act, 1902,⁹ Ajmere Forest Regulation, 1874,¹⁰ Assam Forest Regulation, 1891,¹¹ the Bombay City Improvement. improvement Act, 1898,¹² the Calcutta Improvement Act, 1911,¹³ the Trusts. Rangoon Development Trust Act, 1920,¹⁴ the United Provinces Town Improvement Act, 1919,¹⁵ the Madras Town Planning Act, 1920,¹⁶ and the Punjab Town Improvement Act, 1922.¹⁷

Award. By Act XIX of 1921, s. 2, the award of the Judge shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clauses (2) and (9) respectively of the Code of Civil Procedure, 1908.

Deposit of compensation in Court. If the persons interested do not consent to receive the compensation money awarded by the Collector, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation, the Collector shall deposit the amount of the compensation in Court.¹⁸

The Court can deal with all questions as to the application of the fund.¹⁹

A decree of the Court may operate as *res judicata*, where a dispute as to title has been referred to the Court.²⁰

Acquisition of part of house. If any question arises as to whether any land proposed to be taken under the Act does or does not form part of a house, manufactory, or building, the whole of which the owner desires to be acquired, the Collector shall²¹ refer the determination of such question to the Court.²²

¹ Ben. Act VI of 1878, ss. 19, 25, 32, 38, 36, 37.

² Ben. Act II of 1882, ss. 36-41.

³ Ben. Act III of 1876, ss. 21, 52.

⁴ B. & O. Act V of 1922, chap. vi.

⁵ B. & O. Act VI of 1922, s. 18.

⁶ Ben. Act VI of 1880, s. 21.

⁷ Act VII of 1878, s. 88.

⁸ Mad. Act V of 1882, s. 68.

⁹ Bur. Act IV of 1902, s. 81.

¹⁰ Reg. VI of 1874, s. 3.

¹¹ Reg. VII of 1891, s. 78.

¹² Bom. Act IV of 1898, *post*, p. 509.

¹³ Ben. Act V of 1911, *post*, pp. 510-512.

¹⁴ Bur. Act V of 1920, *post*, pp. 513, 514.

¹⁵ U. P. Act VIII of 1919.

¹⁶ Mad. Act VII of 1920, s. 4.

¹⁷ Punj. Act IV of 1922, s. 59.

¹⁸ Act I of 1894, s. 31. The reference can be heard even if the compensation has been paid to one of the parties: *Jogesh Chandra Ray v. Yakub Ali* (1912), 17 C. W. N., 1057.

¹⁹ *Kamini Debi v. Pramatha Nath Mookerjee* (1911), 39 Calc., 38.

²⁰ *Ramachandra Rao v. Ramachandra Rao* (1922), 49 I. A., 129; 45 Mad., 320; 26 C. W. N., 713; 24 Bom. L. R., 968.

²¹ *Krishna Das Roy v. Land Acquisition Collector of Pabna* (1911), 16 C. W. N., 327.

²² Act I of 1894, s. 49.

The Court of the Land Acquisition Judge is a Court of special jurisdiction, the powers and duties of which are defined by statute, and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the inquiry before it.¹

As to interference by the High Court, see *Manick Chand Mahata v. Corporation of Calcutta* (1921), 48 Calc., 916.

A District Judge has no jurisdiction to order a refund of money paid by the Collector without any apparent irregularity.²

"Act I of 1894, section 54.³ Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees,⁴ and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only⁵ lie in any proceedings under this Act⁶ to the High Court from the award, or from any part of the award,⁷ of the Court, and from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

As to an appeal from an award made by an Assistant Judge in the Bombay Presidency, see *Ranchhodhai v. Collector of Kaira* (1909), 38 Bom., 371; 11 Bom. L. R., 817. No second appeal lies in that case.⁸

An appeal lies to the High Court from an order of the District Judge as to the disposal of compensation awarded,⁹ or from an award made under the Ancient Monuments Preservation Act, 1904 (VII of 1904).¹⁰

An appeal does not lie from an order refusing to restore a claim case by setting aside an order passed in default,¹¹ or from an order under section 49 (*ante*, p. 506).¹²

¹ *British India Steam Navigation Company v. Secretary of State* (1910), 38 Calc., 230, at pp. 244, 245; 15 C. W. N., 87, at p. 98.

² *Gobindaranee Dasec v. Brinda Raneec Dasec* (1908), 35 Calc., 1104; 12 C. W. N., 1089.

³ As amended by Act XIX of 1921, s. 3.

⁴ *Ante*, pp. 384-386.

⁵ This does not restrict the right of appeal. It restricts the *forum* of appeal: *Har Dial Shah v. Secretary of State* (1922), 8 Lahore, 420.

⁶ This applies to a revised award: *Chandar Lal Saha v. Collector of Bareilly* (1921), 44 All., 86.

⁷ An order for investment of the compensation money is not a part of

the award: *Ramachandra Rao v. Ramachandra Rao* (1922), 49 I. A., 129; 45 Mad., 820; 26 C. W. N., 718; 24 Bom. L. R., 968, differing from *Trinayani Dassi (Sreemati) v. Krishna Lal Dey* (1910), 17 C. W. N., 985 n.

⁸ *Nathubhai Narandas v. Manordas Lalidas* (1911), 36 Bom., 360; 14 Bom. L. R., 325.

⁹ *Sheo Rattan Rai v. Mohri* (1899), 21 All., 354.

¹⁰ *Vishnu v. District Deputy Collector, Colaba* (1917), 19 Bom. L. R., 937.

¹¹ *Hasun Molla v. Tasiruddin* (1911), 39 Calc., 398.

¹² *Sarat Chandra Ghose v. Secretary of State* (1919), 46 Calc., 861.

This is the only appeal which is given by the Act.¹ There is no appeal from an order of a District Judge allowing a Hindu widow to withdraw the compensation.²

Before the amendment of the section it was held that there was no second appeal from an appeal to the District Judge from an award made by the Assistant Judge under the Act.³ It is submitted that there is now such appeal.

Mines and
minerals.

As to the cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, see the Land Acquisition Mines Act, 1885 (XVIII of 1885), which applies in the first instance to the territory then administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, and which has been declared in force in the Santhal Parganas⁴ and in the Angul District.⁵

As to the modification of the Land Acquisition Act, 1894, in cases under the several Improvement Acts, see *post*, pp. 509-516.

Chittagong
Hill Tracts.

By section 18 (2) (k) of the Chittagong Hill Tracts Regulation, 1900,⁶ the Local Government may make Rules to regulate the acquisition by Government of land required for public purposes.

Aden.

As to the power to make rules for the acquisition of land in Aden, see Regulation VII of 1900, s. 10.

Improvement Trusts.

Trusts for the improvement of the cities of Bombay, Calcutta, Rangoon, and of towns in the United Provinces and the Punjab, have been respectively created by the following enactments: the Bombay City Improvement Act, 1898,⁷ the Calcutta Improvement Act, 1911,⁸ the Rangoon Development Trust Act, 1920,⁹ the United Provinces Town Improve-

¹ See *Biswa Nath Sinha v. Bindhumukhi Dasi* (1915), 19 C. W. N., 1290. As to appeals before the amendment of s. 54 by Act XIX of 1921, see *Rangoon Botatoung Company v. Collector, Rangoon* (1912), 39 I. A., 197; 40 Calc., 21; 16 C. W. N., 961; 14 Bom. L. R., 838, explained in *Ramachandra Rao v. Ramachandra Rao* (1922), 49 I. A., 129; 45 Mad., 320; 26 C. W. N., 718; 24 Bom. L. R., 968.

² *Biswa Nath Sinha v. Bindhumukhi Dasi* (1915), 19 C. W. N., 1290.

³ *Nathubhai Narandas v. Manordas Laldas* (1911), 86 Bom., 366; 14 Bom. L. R., 325; *Ahmedbhai Habibbhai v. Waman Dhondur* (1918), 38 Bom., 337; 16 Bom. L. R., 72.

⁴ Reg. III of 1872, s. 3, as amended by Reg. III of 1899, s. 8.

⁵ Reg. I of 1894, s. 3.

⁶ Reg. I of 1900.

⁷ Bom. Act IV of 1898, amended by Act XIV of 1904, and Bom. Act I of 1913.

⁸ Ben. Act V of 1911, amended by Ben. Act III of 1915.

⁹ Bur. Act V of 1920.

ment Act, 1919,¹ and the Punjab Town Improvement Act, 1922.²

Those Acts are in similar terms.

The duty of carrying out the provisions of the Act is con- Boards of Trustees.
fided to Boards of Trustees, whose qualifications, duties and
powers are defined in the Acts.³

Under the Bombay City Improvement Act, 1898, a Bombay City Improvement.
Tribunal of Appeal has been constituted to perform the
functions of the Court under the Land Acquisition Act.⁴

The Tribunal consists of a President and two assessors. Constitution of Tribunal.
The President and one of the assessors are appointed by
Government. The other assessor is appointed by the Bombay
Corporation.⁵

The President must be—

- (a) a member of the Judicial Branch of the Imperial or Provincial Civil Service of not less than ten years' standing who has served as District Judge, or held judicial office not inferior to that of a first class Sub-ordinate Judge, for at least three years of that period ;
- (b) a barrister, advocate, or pleader of not less than eight years' standing who has practised as an advocate or pleader in the Bombay High Court.⁶

The decision of all questions of law and procedure and Questions of Law and Procedure.
costs and apportionment of compensation shall rest solely
with the President; and any such question may be tried and
decided in the absence of the Assessors if in the opinion of the
President their presence is unnecessary; and when any such
question is so tried and decided the decision of the President
shall be deemed to be the decision of the Tribunal.⁷

The Act also provides for the duration of office of the
members of the Tribunal,⁸ their removal,⁹ and the supply of
vacancies.¹⁰

Any award or order of the Tribunal shall be enforced by Enforcement of decision of Tribunal.
the Small Cause Court as if it had been a decree or order of
that Court.¹¹

¹ U. P. Act VIII of 1919.

² Punj. Act IV of 1922.

³ Bom. Act IV of 1898, ss. 3-25;

Ben. Act V of 1911, ss. 3-68; Bur.

Act V of 1920, ss. 3-38; U. P. Act

VIII of 1919, ss. 3-54; Punj. Act IV

of 1922, ss. 3-55.

⁴ Bom. Act IV of 1898, s. 48 (1).

⁵ *Ibid.* s. 48 (3).

⁶ *Ibid.* s. 48 (4).

⁷ Bom. Act I of 1913, s. 17 (1).

⁸ S. 48 (5).

⁹ S. 48 (6).

¹⁰ S. 48 (7).

¹¹ S. 48 (10).

Appeal to
High Court.

In any case in which the President may grant a certificate that the case is a fit one for appeal, an appeal lies to the High Court from the award or part of the award of the Tribunal.¹

As to special provisions as to compensation, see section 49 of the Act.

Confirmation
of section 48
(11).

By Act XIV of 1904, s. 1, the City of Bombay Improvement Act, 1898, shall, so far as regards the appellate jurisdiction conferred upon the High Court by section 48, sub-section (11), thereof, be as valid as if it had been passed by the Governor-General of India in Council at a meeting for the purpose of making Laws and Regulations.

Appeals.

"Section 2 (of Act XIV of 1904). Subject to the provisions of section 48, sub-section (11), of Bombay Act IV of 1898, the provisions of the Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under that sub-section, and orders passed therein by the High Court may on application to the Chief Judge of the Small Cause Court be executed by him as if they were decrees made by himself."

As to the portions of the Land Acquisition Act, 1894, which are applied by the Bombay Improvement Act, 1898,² see section 47, Sch. A, of the latter Act.

Calcutta Improvement Act, 1911.

The Calcutta Improvement Act³ contains the following provisions as to the acquisition of lands :

Tribunal.

"Section 70. A tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Modification of
Land Acquisition
Act, 1894.

"Section 71. For the purpose of acquiring land under the said Act for the Board :

(a) the Tribunal shall, except for the purposes of section 54⁴ of the Land Acquisition Act, 1894 (I of 1894), be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge under the said Act ;

¹ S. 48 (11). As to the case where the claimant does not avail himself of the right of appeal, see *Gangadas Mulji v. Ali Mahomed (Haji)* (1916), 42 Bom., 54 ; 18 Bom. L. R., 826.

² Bom. Act IV of 1898.

³ Ben. Act V of 1911. This Act has been amended by Ben. Act III of 1915.

⁴ *Ante*, p. 507.

(b) the said Act shall be subject to the further modifications indicated in the schedule ;

(c) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.¹

“Section 72.—(1) The said Tribunal shall consist of a Constitution of Tribunal. President and two assessors.

“(2) The President of the Tribunal shall be either—

(a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service, who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge ;

(b) a barrister, advocate, or pleader, of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

“(3) The President of the Tribunal and one of the assessors shall be appointed by the Local Government, and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the Local Government :

“Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

“(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

“(5) The Local Government may, on the ground of incapacity or misbehaviour, or for any other good or sufficient reason, cancel the appointment of any person as a member of the Tribunal.

“(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other avoidable cause, the Local Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or in default of the Corporation the Local Government, shall forthwith appoint a fit person to be a member in his place.”

“Section 77. For the purpose of determining the award Award of Tribunal, how

¹ See s. 54, as amended (*ante*, p. 507).

to be determined.

to be made by the Tribunal under the Land Acquisition Act, 1894 :

- (a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail ;
- (b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary ; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal ; and
- (c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

"(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court."

The Tribunal has also power under section 64 of the Act to determine certain disputes between the Board of Trustees and other persons.

As to the powers of the President of the Tribunal appointed under section 72 of the Calcutta Improvement Act, 1911,¹ to revise the decision of the Controller fixing the standard rent under the Calcutta Rent Act, 1920,² see *post*, p. 569.

Appeals from awards of Tribunal.

The Calcutta Improvement (Appeals) Act, 1911,³ makes the following provision for appeals :

"Section 8.—(1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court⁴ in any of the following cases, namely :

- (a) where the decision is that of the President of the Tribunal sitting alone in pursuance of section 77 of the said Act ;
- (b) where the decision is that of the Tribunal and—
 - (i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

¹ Ben. Act V of 1911.

² Ben. Act III of 1920.

³ Act XVIII of 1911.

⁴ The High Court at Calcutta, s. 2.

(ii) the Court¹ grants special leave to appeal :

“ Provided that the Court¹ shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (1), and the amount in dispute is five thousand rupees or upwards.

“(2) An appeal under clause (b) of sub-section (1) shall only lie on one or more² of the following grounds, namely :

- (i) the decision being contrary to law or to some usage having the force of law ;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law ;
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.”

“ Section 5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal under this Act, as if it were a decree made by himself.”³

Execution of
orders of High
Court.

Rangoon Development Trust.

The Rangoon Development Trust Act, 1920,⁴ as amended by the Rangoon Development Trust (Amendment) Act, 1922,⁵ also provides that a Board of Trustees should be constituted⁶ and invested with powers for carrying on the objects of the Act.

As to the extension of portions of this Act to the whole of Burma, see Burma Act XII of 1922.

Section 34 of the Act gives to the Board power to acquire lands and easements under the Land Acquisition Act, 1894,⁷ but the application of the Land Acquisition Act to cases under the Development Act is subject to modifications detailed in Schedule I of the latter Act.

There is a reference to the Court, *i.e.* to the highest Court of original jurisdiction in Rangoon,⁸ where there is any dispute as to the existence of a necessity to acquire immovable

Reference to
Court.

¹ The High Court at Calcutta.

² Act X of 1914, Sch. I.

³ *Ibid.*

⁴ Bur. Act V of 1920.

⁵ Bur. Act XII of 1922.

⁶ Bur. Act V of 1920, ss. 4, 5.

⁷ *Ante*, pp. 504-506.

⁸ Bur. Act V of 1920, s. 2 (d). The High Court is now such Court: *ante*, chaps. vii, xvi.

property,¹ or if the decision of the referee is questioned as regards :

- (a) estimates of the accrual of increment,
- (b) the proportion of the accrued increment to be contributed to the cost of the scheme,
- (c) the contribution to be levied on each plot included in the scheme,
- (d) the contribution to be levied on any plot which is increased in value by the scheme, but which is not included in the scheme,
- (e) the compensation to be paid under section 56 (compensation in certain cases), or
- (f) the date or dates upon which the contribution shall be levied.²

Constitution
of the Court.

Such reference to the Court shall ordinarily lie to a single Judge, but a reference, except in the case of a reference under section 34 (as to the existence of a necessity for the acquisition), shall lie to a Bench of two Judges in the following cases :

- (a) where the amount of the claim involved exceeds the sum of 25,000 rupees ;
- (b) as to the estimates of the accrual of increment, and as to the proportion of the accrued increment to be contributed to the cost of the scheme.³

The decision of the Court whether the reference lies to a single Judge or to a Bench shall be final :

Provided that in a reference to a Bench of the Judges constituting such Bench they are unable to agree they shall refer any matter upon which they may differ to another Judge of the Court whose decision thereon shall be final.⁴

United Provinces Improvement Act.

United
Provinces.

Provision has been made for the improvement and expansion of towns in the United Provinces by the United Provinces Town Improvement Act, 1919.⁵

Trusts have been created with powers to carry out improvement schemes.⁶

¹ S. 34, sub-s. (8). See Bur. Act XII of 1922, s. 4.

² S. 39, sub-s. (9).

³ S. 39 (1).

⁴ S. 39 (2).

⁵ U. P. Act VIII of 1919.

⁶ SS. 3-8.

"Section 53. If any question or dispute arises—

Reference of
disputes to
Tribunal.

(a) between the Trust and the previous owner of any street or square or part thereof which has vested in the Trust under section 46 (transfer of Trust) and has been altered or closed by it, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section (altering or closing street or square), or

(b) between the Trust and any person who was entitled, otherwise than as a mere licensee, to use as a means of access any street or part thereof which has vested in the Trust under section 46—

(i) as to whether the alteration or closing of such street, square, or part thereof causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 46 are reasonably sufficient, or

(iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(c) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under sections 26 (rebuilding scheme), 30 (development scheme), 32 (town expansion scheme), 48 (turning or closing street or square), or 101 (general power to pay compensation), the matter shall be determined by the Tribunal, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust, and the determination of the Tribunal shall be final."¹

"Section 57. A Tribunal shall be constituted, as provided in section 59, for the purpose of performing the functions of the Court in reference to the acquisition of land under the Land Acquisition Act, 1894."²

Tribunal to be
constituted.

¹ As to appeals, see *post*, p. 516.

² Act I of 1894.

Modification
of Land
Acquisition
Act, 1894.

"Section 58. For the purpose of acquiring lands under the said Act for the Trust—

- (a) the Tribunal shall (except for the purposes of section 54 of that Act)¹ be deemed to be the Court and the President of the Tribunal shall be deemed to be the Judge, under the said Act;
- (b) the said Act shall be subject to the further modifications indicated in the Schedule (to the United Provinces Town Improvement Act, 1919);

- (d) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final."²

Constitution of
the Tribunal.

The constitution of the Tribunal is, *mutatis mutandis*, similar to the constitution of the Tribunal under the Calcutta Improvement Act, 1911.³

Award of
Tribunal, how
to be deter-
mined.

Section 64 is, *mutatis mutandis*, similar to section 77 of the Calcutta Improvement Act, 1911.⁴

Appeals in
United
Province.

The United Provinces Town Improvement (Appeals) Act, 1920,⁵ makes provisions for appeals which are, *mutatis mutandis*, similar to those provided for appeals from orders made under the Calcutta Improvement Act, 1911.⁶

Punjab Town Improvement.

Punjab.

The Punjab Town Improvement Act, 1922,⁷ creates a Tribunal similar to that created by the Bombay City Improvement Act, 1898.⁸ Provision is also made for the reference of disputes to the Tribunal.⁹

Town Planning.

Bombay Town
Planning.

The Bombay Town Planning Act, 1915,¹⁰ which extended in the first instance to the Island of Salsette, provides for an arbitrator and for the appointment of a Tribunal of Arbitration,¹¹ but such Tribunal is not a Court.¹²

Land which is needed for the purpose of a town planning

¹ *Ante*, p. 507.

² As to appeals, see below.

³ *Ante*, p. 511.

⁴ *Ante*, pp. 511, 512.

⁵ Act III of 1920.

⁶ *Ante*, pp. 512, 513.

⁷ Punj. Act IV of 1922, ss. 59,

60, and 64.

⁸ Bom. Act IV of 1898, *ante*, pp. 509, 510.

⁹ Punj. Act IV of 1922, s. 54.

¹⁰ Bom. Act I of 1915.

¹¹ S. 33.

¹² S. 38.

scheme is deemed to be land needed for a private purpose within the meaning of the Land Acquisition Act, 1894.¹

Under the Madras Town Planning Act, 1920, an Arbitrator appointed by the Local Government decides claims and awards compensation.² His decision is final and binding on all persons.³

Works of Defence.

By the Indian Works of Defence Act, 1908 (VII of 1903),⁴ any person interested who has not accepted the award of the Collector may require that the matter be referred by the Collector for the determination of the Court, *i.e.* a principal Civil Court of original jurisdiction, unless the Local Government, as it is empowered to do, has appointed a special judicial officer within any specified local limits to perform the functions of the Court under the Act,⁵ whether his objections be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.⁶

Subject to the provisions of the Code of Civil Procedure⁷ applicable to appeals from original decrees,⁸ an appeal lies to the High Court from the award or from any part of the award of the Court in any proceeding under the Act.⁹

Ajmere.

By section 26 of the Ajmere Land and Revenue Regulation, 1877 (II of 1877), provision is made for the acquisition of land situate in an *istimrari* estate for the purpose of constructing a railway, or for any other object which in the opinion of the Chief Commissioner may reasonably be expected to improve the value of such estate. The determination of the Collector is final.

As to the acquisition of rights in forest and waste land, see *post*, chapter liv.

¹ Bom. Act I of 1915, s. 51.

² Mad. Act VII of 1920, s. 28.

³ *Ibid.* s. 29.

⁴ S. 2 (g).

⁵ S. 18 (i).

⁶ *Ante*, pp. 384, 385.

⁷ S. 43.

Ajmere
istimrari
estates.

CHAPTER LII.

ARBITRATION.

THE Indian law of arbitration has no concern with an award passed outside British India,¹ except perhaps when the arbitration is made in a suit pending in British India.

Indian
Arbitration
Act.

By the Indian Arbitration Act, 1899 (IX of 1899), which applies to arbitration by agreement without the intervention of a Court of Justice,² the High Court in the Presidency towns, the High Court in Rangoon,³ and elsewhere the District Judge can stay proceedings, when there has been a submission to arbitration.⁴

Appointment
of arbitrator
by Court.

"Section 8.—(1) In any of the following cases:

"(a) where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

"(b) if an appointed arbitrator neglects or refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy;

"(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him;

"(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy

¹ *Oppenheim v. Mahomed Haneef* (1922), 49 I. A., 174; 45 Mad., 496; 26 C. W. N., 642.

² Preamble. It does not apply to arbitration in the course of litigation: *Amar Chand Chamaria v. Banwari Lal Rakshit* (1921), 49 Cal., 608.

³ Bur. Act XI of 1922, s. 23.

⁴ Act IX of 1899, s. 19. See *Ralli*

v. Noor Mahomed (1906), 31 Bom., 286; 8 Bom. L. R., 955. In the United Provinces "submission" means an agreement to submit present or future differences to arbitration under the Act, whether an arbitrator is named therein or not: U. P. Act I of 1912, s. 2.

should not be supplied, and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire, or third arbitrator.

"(2) If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator, umpire, or third arbitrator, who shall have the like power to act in the reference, and make an award as if he had been appointed by consent of all parties."

"Section 13.—(1) The Court¹ may, from time to time, remit the award to the reconsideration of the arbitrators or umpire." Remission of award.

This power should be sparingly exercised and only upon certain well-known principles.²

"Section 14. Where an arbitrator or umpire has mis-conducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award." Power to set aside award.

An award on a submission, on being filed in the Court in accordance with the provisions of the Act, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.³ Award enforceable as a decree.

A Small Cause Court has no power to stay proceedings under section 19 of the Arbitration Act, 1899 (IX of 1899), but the High Court has power to stay proceedings in a Small Cause Court or in any other Court subordinate to it.⁴ Stay by Small Cause Court.

The Indian Arbitration Act, 1899, applies within the local limits of the ordinary original civil jurisdiction of the High Court at Rangoon in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted within those local limits.⁵ Rangoon.

Save in so far as is otherwise provided by the Indian Civil Procedure Code.

¹ *Ante*, p. 518.

² *U. M. Chowdhury v. Jiban Krishna Ghose* (1922), 49 Cal., 646, at p. 653.

³ S. 15 (1). It is not a decree: *Sassoon and Co. v. Ramdutt Ram*

kissen Das (1922), 49 I. A., 366.

⁴ *Ralli v. Noor Mahomed* (1906), 81 Bom., 236; 8 Bom. L. R., 955.

⁵ Act IX of 1899, s. 23, as amended by Bur. Act XI of 1922, Sch. I.

Arbitration in
suits.

Arbitration Act, 1899,¹ or by any other law for the time being in force, all references to arbitration, whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the second schedule of the Code of Civil Procedure.² That schedule provides in the first instance for arbitration in suits.³

Special case.

Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court.⁴

As to an appeal from an order on such award, see *ante*, p. 346.

Judgment in
accordance
with award.

Where the Court sees no reason to remit the award or any of the matters referred to arbitration for re-consideration, and no application has been made to set aside the award or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.⁵

Appeal.

Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.⁶

Agreement to
refer.

When any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

Where no sufficient cause that an agreement should not be filed is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement, or if there be no such provision and the parties cannot agree, the Court may appoint an arbitrator.⁷

As to the stay of a suit where there is an agreement to refer to arbitration, see para. 18.

¹ Act IX of 1899.

² Act V of 1908, s. 89.

³ Sch. II, paras. 1-16.

⁴ *Ibid.* para. 11.

⁵ *Ibid.* para. 16 (1).

⁶ *Ibid.* para. 16 (2); *Jai Narain-Babu Lal v. Narain Das-Jaini Mal* (1922), 8 Lahore, 296.

⁷ *Ibid.* para. 17.

CHAPTER LIII.

BOUNDARIES.

Bengal.

By section 62 of the Bengal Survey Act, 1875,¹ "no suit shall be brought to set aside an order of a Superintendent of Survey, Collector, Assistant Superintendent, or Deputy Collector deciding a boundary dispute unless an appeal shall have been first preferred under section 59 or section 60, or unless the person suing was at the time when such order was passed a minor, or insane, or an idiot." Bengal.

Burma.

By the Burma Boundaries Act, 1880 (Act V of 1880), which applies to the whole of Burma except the Shan States,² an appeal lies to the Commissioner of the division from every order passed by a Boundary-officer under section 12 (confirming or modifying the boundaries as determined by the demarcation-officer), section 13 (dealing with objections), or section 14 (making further inquiry),³ and the order of the Commissioner is final and conclusive as to the fact of actual possession, but does not decide the claim of any person to possess land.⁴ Burma. Appeal to Commissioner.
Decision, how final.

When an order determining a boundary is not open to appeal it becomes final.⁵

Coorg.

As to Coorg see Regulation I of 1899, section 145 (i), *post*, pp. 646-648.

¹ Ben. Act V of 1875.

² Acts V of 1880, s. 1; XIII of 1898, s. 4, Sch. I.

³ Act V of 1880, s. 18.

⁴ Bur. Act III of 1909, s. 4.

⁵ Act V of 1880, s. 22.

Madras.

Boundary
disputes in the
course of
survey.

The Madras Survey and Boundaries Act, 1897,¹ provides for the survey of Government lands, for the survey of estates,² and the settlement of boundary disputes otherwise than in the course of a survey.

By section 13 any party to a boundary dispute before a Survey-officer and any party to an appeal may institute, within the period of one year from the date of the order of the Survey-officer, or the decision of the appellate authority, a suit to establish the right which he claims in respect of the boundary of the property surveyed :

Provided that subject to the result of such suit, if any, such order or decision is conclusive as between the parties to the dispute or to the appeal.³

Where that section does not apply, landowners may dispute the survey in a Civil Court.⁴

Boundary
disputes not
in the course
of survey.

Sections 22 to 27 provide for the settlement by the Collector of boundary disputes arising otherwise than in the course of a survey.

The decision arrived at is final unless reversed or modified by a Civil Court.⁵

¹ Mad. Act IV of 1897.

² As to the definition of estates, see *ibid.* s. 8.

³ *Muthirulandi Poosari v. Sethu-*

ram Aiyar (1919), 42 Mad., 425.

⁴ *Chinna Venkatrayudu v. Ramamurti* (1920), 44 Mad., 340.

⁵ S. 24 (4).

CHAPTER LIV.

FORESTS.

THE several Forest Acts provide a procedure for the reservation of forests belonging to Government, and for the determination of the rights of persons claiming rights of pasture and forest produce.¹

As to waste lands, see *post*, chapter lv.

The following are the Forest Acts in force in British India :

(1) The Indian Forest Act, 1878² (as amended by the Forest Act, 1890³). That Act applies to the Provinces of Bombay, Bengal, Bihar and Orissa, Agra, the Punjab (except the district of Hazara), Oudh, and the Central Provinces.

It has also been applied to the district of Angul,⁴ to the Santhal Parganas,⁵ and to the Chittagong Hill Tracts.⁶

(2) The Madras Forest Act, 1882.⁷ This Act applies to the Presidency of Madras and to certain scheduled districts.

(3) The Burma Forests Act, 1902.⁸ This Act extends to the whole of Burma, including the Shan States.⁹

(4) The Ajmere Forest Regulation, 1874.¹⁰

(5) The Assam Forest Regulation, 1891.¹¹

(6) The British Baluchistan Forest Regulation, 1890.¹²

(7) The Hazara Forest Regulation, 1911.¹³

(8) The Punjab Land Preservation (Chos) Act, 1900.¹⁴

¹ For a definition of "forest produce," see Act V of 1890, s. 2. A claim to a percentage of forest income is not a "claim to forest produce": *Secretary of State v. Vydia Pillai* (1898), 17 Mad., 193.

² Act VII of 1878.

³ Act V of 1890.

⁴ Reg. III of 1913, s. 3.

⁵ Reg. III of 1872, s. 3, as

amended by Reg. III of 1899, s. 3.

Reg. I of 1900, s. 4.

Mad. Act V of 1882.

Bur. Act IV of 1902.

Ibid. s. 1 (2).

Reg. VI of 1874.

Reg. VII of 1891.

Reg. V of 1890.

¹³ Reg. III of 1911.

¹⁴ Punj. Act II of 1900.

Indian Forest Act, 1878.

Power to
reserve forests.

By section 3 of the Indian Forest Act, 1878,¹ the Local Government may from time to time constitute any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner provided in the Act.

A Civil Court can determine whether a forest sought to be reserved comes within the above conditions.²

Difference
between Forest
Act and Land
Acquisition
Act.

"The most important distinction between the Land Acquisition Act (I of 1894) and the Indian Forest Act (VII of 1878) lies in this: that whereas in the Land Acquisition Act the Legislature has expressly constituted the Local Government the sole arbiter as to what land shall be acquired for a public purpose, the Indian Forest Act gives the power to afforest subject to conditions as to the fulfilment of which the Local Government is given no express power to decide.

"This will be at once apparent on comparing section 4 of the Land Acquisition Act with section 3 of the Indian Forest Act. The former runs: 'Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose.' That is to say it suffices for the exercise of the power that the Local Government is satisfied as to the existence of the conditions precedent to the exercise of its powers. But section 3 of the Indian Forest Act does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government, but upon a question of fact. It runs: 'The Local Government may constitute any forest land which is the property of Government, etc.' If the land actually fulfils that condition Government can exercise the power, not otherwise. The test is, not what appears to the Local Government, but what is the actual fact."³

Acquisition
of land.

"Section 10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest produce or a water course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part. If such claim is admitted in whole or in part, the Forest Settlement Officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his rights; or (3) proceed to acquire such land in the manner provided by the

¹ Act VII of 1878.

² *Balvant Ramchandra v. Secretary of State* (1905), 29 Bom., 480; 7 Bom. L. R., 497.

³ *Balvant Ramchandra v. Secretary of State* (1905), 29 Bom., 480, at pp. 505, 506; 7 Bom. L. R., 497.

Land Acquisition Act, 1894.¹ For the purpose of so acquiring such land the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894.²

"Section 11. In the case of a claim to rights of pasture or to forest produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part."

Claim to rights of pasture or forest produce.

Section 14 gives power to the Forest Settlement Officer to make provision for the exercise of admitted rights.

Exercise of rights admitted.

Section 15 makes provision for the commutation of rights.

Commutation of rights.

"Section 16. Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under sections 10, 11, 14 or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders :

Appeals.

"Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court."

The order passed on the appeal by such officer or Court or by the majority of the members of such Court shall be final, subject to revision by the Local Government.³

As to a suit in a Civil Court in respect of drift and stranded timber, see section 47 of the Act.

Drift and stranded timber.

Madras Forest Act, 1882.

By section 3 of the Madras Forest Act, 1882,⁴ the Governor in Council may constitute any land at the disposal of Government a reserved forest in the manner provided in the Act.

Power to reserve forests.

Section 4 provides for a notification by the Governor in Council.

¹ Act I of 1894, *ante*, chap. li.

² *Ibid.*

³ Act VII of 1878, s. 17.

⁴ Mad. Act V of 1882, validated by Act XXI of 1892.

Suits barred. "Section 5. Except as hereinafter provided, no Civil Court shall, between the dates of the publication of the notification under section 4 and of the notification to be issued under section 16, entertain any suit to establish any right in or over any land, or to the forest produce of any land included in the notification under section 4."

Claims to rights of occupancy and ownership. "Section 10. In the case of a claim to a right in or over any land other than the following rights:

- (a) a right of way;
- (b) a right to a water course or to use of water;
- (c) a right of pasture, or
- (d) a right to forest produce;

the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same in whole or in part.

"(i) If such claim is admitted wholly or in part, the Forest Settlement Officer may—

- (1) come to an agreement with the claimant for the surrender of the right; or
- (2) exclude the land from the limits of the proposed forest; or
- (3) proceed to acquire land in the manner provided by the Land Acquisition Act, 1894.¹

"For the purpose of so acquiring such land (i) the Forest Settlement Officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894."

Appeal. Section 10 (ii) provides for an appeal to the District Court by the claimant from a rejection in whole or in part.

Appeal to High Court. An appeal lies to the High Court from a decision of the Forest Settlement Officer.²

Claims. Section 11 deals with claims to rights of way, water course, pasture and to forest produce.

Provision for rights of pasture and forest produce. Section 12 requires the Forest Settlement Officer to make provision for rights of pasture or of forest produce which are admitted by him.

Commutation of rights. Section 13 deals with the commutation of such rights.

Appeal from orders passed under sections 11, 12 and 13. "Section 14. The claimant, or the Forest Officer appointed under section 4, or any other person generally or specially

¹ Act I of 1894, *ante*, chap. li.

(1886), 11 Mad., 809.

² *Kamaraju v. Secretary of State*

empowered by the Government in this behalf, may, within sixty days from the date of any order passed by the Forest Settlement Officer under sections 11, 12, and 13 present an appeal from such order—

“to a Forest Court constituted as hereinafter provided, or where no such Court is constituted, to such Officer of the Revenue Department of not less than twelve years’ standing as the Governor in Council may, from time to time, by notification in the Fort St. George Gazette, appoint by name or as holding an office, to hear appeals from such orders.

“In disposing of such appeals the Revenue Officer appointed as aforesaid shall be guided by the provisions of sections 39 and 40 of this Act.”¹

“Section 37. Where no Revenue Officer has been appointed Forest Court. to hear appeals under section 14, the Governor in Council shall, from time to time, as occasion may arise, appoint a Forest Court to hear such appeals. The Court shall consist of three members, of whom—

“one shall be the Judge of the Court of any district in which any portion of the land, the rights in or over which are in dispute, is situated, or the officer presiding in the principal Civil Court of original jurisdiction of such district,

“another shall be the Collector of any such district or an officer of the Revenue Department of not less than twelve years’ standing,

“and the third member shall be a person specially selected by the Governor in Council, not holding an office of profit in the service of Government.

“Section 38. The Judge appointed a member as aforesaid Judge to be President. shall be the President of the said Court, and shall make all such orders in the case as may be necessary prior to the hearing of the appeal.

“The official member of the Court may be appointed by name or as holding an office.

“Section 39. For the hearing of appeals the Forest Court Hearing of appeals. shall fix a day and a convenient place in the neighbourhood of the land regarding which, or regarding rights over which, a dispute exists, and shall give notice thereof to the parties.

“All cases before the Forest Court shall be heard and

¹ Below and *post*, p. 528. Although it does not appear that an order of a decision of the Forest Court is final, the Revenue Officer is final.

disposed of, as far as may be, in accordance with the provisions of the Code of Civil Procedure :

"Provided that if, on the hearing of any such case, any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise on which the Court shall entertain reasonable doubts, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court.

"And it shall be the duty of the Forest Court to make such reference to the High Court if the question involve any principle of general importance, or affect the rights of a class.

Court to pass orders which shall be final.

"Section 40. At the conclusion of the inquiry, and after the receipt of the order of the High Court (which shall be binding upon the Forest Court) upon the reference (if any) prescribed by the preceding section, the Forest Court shall proceed to pass such order in the case as it may consider just and proper; and the order passed by the said Court or by the majority of the members of the said Court shall be final."

Burma Forests Act, 1902.

Power to constitute reserved forests.

By section 4 of the Burma Forests Act, 1902,¹ which was declared in force in the Arakan Hill District by Regulation I of 1916, section 2, the Local Government may constitute any land at the disposal of Government² a reserved forest in the manner provided by the Act.

An inquiry is held by the Forest Settlement Officer as to claims. Sections 12 and 13 deal with claims admitted in whole and in part. For the purpose of acquiring a right in and over land other than a claim to a right of way, a right to a water course or to the use of water, or a right of pasture or to forest produce, the Forest Officer is by section 13 (2) deemed to be a Collector proceeding under the Land Acquisition Act, 1894.³

Appeal.

"Section 14. Any person who has made a claim under chapter ii (Reserved forests) may, within three months from the date of any order passed on such claim by the Forest

¹ Bur. Act IV of 1902.

¹ Act I of 1894, *ante*, chap. II.

² Cf. *ante*, p. 524.

Settlement Officer under section 8 (inquiry as to claims), section 10 (treatment of claim relating to practice of shifting cultivation), section 11 (order on claim to right of way, water course, or pasture or to forest produce), section 12 (provision for right of pasture, or to forest produce admitted), or section 13 (order on other claims), present an appeal from such order to such officer of the Revenue Department, of rank not less than that of a Deputy Commissioner, as the Local Government may, by notification, appoint to hear appeals from such orders."

As to the presentation and hearing of appeals, see section 15 of the Act.

"Section 16. The Local Government may, before the issue of the notification under section 18 (declaring forest reserve), revise any order passed by a Forest Settlement Officer or an appellate officer under the preceding sections, and may remand the case for further inquiry or pass any order which the Forest Settlement Officer could have passed :

Revision by
Local
Government.

"Provided that no agreement or acquisition under section 12, sub-section (1), clause (c) (commutation of right to pasture or forest produce), or section 13, sub-section (1), clause (a) (surrender of right), or clause (c) (acquisition under Land Acquisition Act, 1894), which has been sanctioned by the Local Government as required by such sections, shall be set aside after a part performance of such agreement or after possession of the land has been taken under such acquisition."

As to a suit in a Civil Court in respect of drift timber and certain other timber, see section 40 of the Act.

Drift, etc.,
timber.

The Ajmere Forest Regulation, 1874.

The Ajmere Forest Regulation, 1874,¹ contains no provision which specially affects the jurisdiction of a Civil Court.

The Assam Forest Regulation, 1891.

The Assam Forest Regulation, 1891 (Regulation VII of Reservation, 1891) contains the following provisions :

"Section 4. The Local Government may constitute any land at the disposal of Government a reserved forest in the manner provided by the Regulation."

¹ Reg. VI of 1874.

Power to
acquire land
over which
right is
claimed.
Order on
certain claims.

Section 11 of the Regulation is in terms similar to those in section 10 of the Indian Forest Act, 1878.¹

In a case of a claim to a right of way, a right to a water course, or to use of water, or a right of pasture or of forest produce, the Forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.² In the case of the admission of claims the Forest Settlement Officer has power to provide for the exercise of the rights claimed.³

Appeal.

"Section 15. Any person who has made a claim under chapter ii of the Regulation may, within three months from the date of any order passed on such claim by the Forest Settlement Officer under sections 11, 12, 13, or 14, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Local Government may, by notification in the official Gazette, appoint by name, or as holding office, to hear appeals from such orders.

"Section 16.—(2) Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to revenue, and, except as hereinafter provided, shall be final."

Revision.

As to the power of the Local Government to revise arrangements made under section 13 or 16, see section 20 of the Regulation.

Village forests.

The Local Government may also constitute any land at the disposal of Government a village forest for the benefit of any village community or group of village communities.⁴

Drift, etc.,
timber.

As to the power of bringing a suit in respect of drift timber and certain other timber, see section 45 of the Regulation.

British Baluchistan Forest Regulation, 1890.

Reservation of
forests.

By section 3 of the Regulation "the Chief Commissioner may, by notification in the Gazette of India, declare any woodland, permanent grazing ground, or other land which is the property of the Government to be a State forest from a date to be fixed in the notification."⁵

¹ Act VII of 1878, *ante*, pp. 524, 525.

² Reg. VII of 1891, s. 12.

³ *Ibid.* ss. 13, 14.

⁴ Ss. 29 to 31.

⁵ Reg. V of 1890.

Hazara Forest Regulation, 1911.

By the Hazara Forest Regulation, 1911,¹ if the Local Government considers it advisable to constitute any area as reserved forest beyond that demarcated at settlement the provisions of the Indian Forest Act, 1878,² chapter ii, sections 3 to 21,³ shall apply.

"Section 48.—(1) No Civil Court shall exercise jurisdiction over any of the following matters, namely:

- (a) any matter provided for in sections 3 to 27 (both inclusive) (management and reservation of forests);
- (b) any matter provided for in sections 38, 39 and 41 (closing of forests, waste lands and lands illicitly cultivated).

"(2) In the matter referred to in sub-section (1) jurisdiction shall rest with the Revenue Officer only.

"(3) Every order passed by a Revenue Officer in exercise of the above jurisdiction shall be subject to such rights of appeal and powers of review and revision as are provided in sections 80 to 84 of the Punjab Tenancy Act, 1887."⁴

Punjab Land Preservation (Chos) Act, 1900.⁵

By section 14 of the above Act the Deputy Commissioner has power to inquire into claims and make awards thereupon.

"Section 18. Every order passed and every award made by a Deputy Commissioner under this Act shall, for the purpose of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 13, 14, 15, and 16 of the Punjab Land Revenue Act, 1887:⁶ Provided that nothing in the Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them."

¹ Reg. III of 1911, s. 11.

² Act VII of 1878.

³ This deals with reserved forests, see *ante*, pp. 524-527.

⁴ Act XVI of 1887, *post*, pp. 609-611.

⁵ Punj. Act II of 1900.

⁶ Act XVII of 1887.

CHAPTER LV.

WASTE LANDS AND ALLUVIAL LANDS.

Waste-lands
(Claims) Act.

THE Waste-lands (Claims) Act, 1868,¹ provides for the investigation and trial of claims to waste lands proposed to be sold or otherwise dealt with on account of Government, or objection to the sale or disposition of such lands.

The procedure under this Act is not applicable only to lands belonging to Government.²

Special Court
for trying
claims.

"Section 7. For the investigation and trial of claims under this Act, the Local Government shall constitute, in every district in which there may be any waste-lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three; of whom the Judge of the district, by whatever name his office may be designated, shall be one.

Powers of
members.

"Any one or more of the members of which such Court consists has power to make all such orders in the case as may be necessary prior to the hearing of the suit:

Exclusion of
officer making
original
inquiry.

"Provided that, whenever the Collector or other officer by whom the original inquiry was held is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

Notice of
constitution
of special
Courts.

"Section 8. Whenever any Court is constituted under this Act, notice thereof shall be given by written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district:

Claims not
cognisable in
other Courts.

"And from the date of the issue of such proclamation no other Court is competent to entertain any claim or objection

¹ Act XXIII of 1868.

Calo., 328; 21 O. W. N., 291; 18

² *Secretary of State v. Maharajah of
Tippura* (1916), 43 L. A., 808; 44

Bom. L. R., 1037.

belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

"Section 9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient."^{Special Courts, where held.}

"Section 14. No appeal lies from any decision or order passed under this Act, nor is any such decision or order open to revision."^{No appeal or revision.}

"Section 15. If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court of Judicature or of the highest Civil Court of appeal and revision in the territory in which the land is situate :^{Reference to High Court, etc.}

"Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of Appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance on the rights of a class."^{When reference obligatory.}

"Section 16. The Court may proceed in the case notwithstanding a reference to the High Court or other highest Court of Appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court or other Court as aforesaid :^{Court may proceed notwithstanding reference.}

"But no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the High Court or highest Civil Court of Appeal."

When any local area is under settlement under the Central Provinces Land Revenue Act, 1917,¹ the provisions of the Waste-lands (Claims) Act, 1863,² apply.³

¹ C. P. Act II of 1917.

² C. P. Act II of 1917, s. 64.

³ Act XXIII of 1863.

Alluvial Lands.

Reference.

The Bengal Alluvial Lands Act, 1920,¹ contains the following :

“Section 5.—(1) When the survey and map referred to in section 4, sub-section (1), have been completed, the Collector shall as soon as possible pass an order making a reference to the principal Civil Court of original jurisdiction in the district for a decision as to what person has a title to the land, and shall state in such order the names of the parties whom he has reason to believe to be claimants to the said land, the amount of costs incurred by the Collector under section 3 and section 4, sub-section (1), and the value of the land.

“(2) On receipt of a reference made under sub-section (1) the principal Civil Court of the district may either proceed to determine the matter or may transfer the matter for determination to any other Civil Court subordinate to such Court competent to try and dispose of a suit for the determination of title to the land.

“(3) Save as otherwise provided in this Act, a reference made under sub-section (1) shall be deemed to be a suit for all the purposes of the Code of Civil Procedure, 1908,² and every decision by a Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of that Code and appealable as such.”

¹ Ben. Act V of 1920.

² Act V of 1908.

CHAPTER LVI.

RAILWAYS.

CHAPTER V of the Indian Railways Act, 1890,¹ contains the following provisions :

“Section 26.—(1) For the purposes of the chapter relating to Railway Commissions and Traffic facilities the Governor-General in Council shall, as occasion may in his opinion require, appoint a Commission styled a Railway Commission, and consisting of one Law Commissioner and two Lay Commissioners.”

“(2) The Commissioners shall sit at such times and in such places as the Governor-General in Council appoints.”

“(3)² The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1898,³ in the place where the Commissioners are to sit as, in the case of a chartered High Court, the Chief Justice may, on the request of the Governor-General in Council, assign by writing under his hand.

“(4) The Lay Commissioners shall be appointed by the Governor-General in Council, and one at least of them shall be experienced in railway business.”

“Section 27. The Commissioners shall take cognizance of such cases only as are referred to them by the Governor-General in Council.”

“Section 28. In any of the following circumstances, namely :

- (a) where complaint is made to the Governor-General in Council of anything done or any omission made by a railway administration in violation or contravention

¹ Act IX of 1890.

1919, Sch. I.

² As amended by Act XVIII of

³ Act V of 1898, s. 4 (1).

of any provision in chapter v of the Act (traffic facilities);

(b) where any difference which is under the provisions of any agreement required or authorised to be referred to arbitration between railway administrations, and the railway administrations apply to the Governor-General in Council to have it referred to the Commissioners;

(c) where any other difference, being a difference between railway administrations or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor-General in Council to have it referred to the Commissioners;

the Governor-General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

**Constitution of
Railway Com-
mission in
session.**

"Section 29. The three Commissioners shall attend at the hearing of any cases referred to them for decision, and the Law Commissioner shall preside at the hearing.

**Powers of
Railway
Commission.**

"Section 30.—(1) In hearing any such case the Commissioners have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

"(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction and not otherwise.

Appeals.

"Section 31.—(1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

"(2)¹ Subject to the provisions of sub-section (1) an appeal shall lie from an order of the Commissioners to the High Court of which the Law Commissioner was a member."

As to stay of proceedings, see section 32.

Assessors.

Section 33.—(1) The Commissioners may from time to time, with the general or special sanction of the Governor-General, call in one or more persons of engineering or other technical knowledge to act as assessors.

Costs.

"Section 35. The cost of and incidental to any proceedings before the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law

¹ As amended by Act XVIII of 1919, Sch. I.

Commissioner was a Judge, as if the payment had been ordered by a decree of the High Court.

"Section 36.—(1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representatives of any such person that an injunction made under this chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding Rs.1,000 for every day during which the injunction is disobeyed after the date of the order directing such payment.¹

Execution of order.

"(2) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application or to the Government."

"Section 39. Except for the purpose of its report to the Governor-General in Council, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them :

Dissolution of Commission.

"Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, reappoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and rehearing the case if they think that the case should be reheard.

Reappointment.

"Section 40. Subject to the above provisions and to any direction of His Majesty in Council, an order of the Commissioners is final and shall not be questioned in, or restrained by, any Court.

Finality of orders.

"Section 41. Except as provided in the Act, no suit shall be instituted or proceedings taken for anything done or

Bar of jurisdiction of ordinary Court.

¹ This does not justify a prospective order: cf. *Emperor v. Byramji Pudumji* (1919), 49 Bom., 886; 21 Bom. L. R., 759; *Chairman, Municipal Commissioners v. Anessooddeen Meah*

(1878), 12 B. L. R., App., 2; *In re Sagar Dutt* (1868), 1 B. L. R. Or. Cr., 41; *In re Love* (1872), 9 B. L. R., App., 35.

any omission made by a railway administration in violation or contravention of any provision of chapter v (Railway Commission and traffic facilities), or of any order made thereunder by the Commissioners or by a High Court.”¹

Railway
Board.

Section 2 of the Indian Railway Board Act, 1905,² is as follows: “The Governor-General in Council may, by notification in the Gazette of India, invest the Railway Board either absolutely or subject to conditions—

- (a) with all or any of the powers or functions of the Governor-General in Council under the Indian Railways Act, 1890, with respect to all or any railways, and
- (b) with the power of the officer referred to in section 4 of the said Act to make general rules for railways administered by the Government.”

Penalties
under Railway
Act.

By section 97 of the Indian Railways Act, 1890.³

(1) Where a railway company has through any act of omission forfeited any sum to the Government under sections 87–96 of that Act, the sum is recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

(2) The suit must be instituted with the previous sanction of the Governor-General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

¹ *Vishvanath Ganesh v. G. I. P. Railway Company* (1921), 45 Bom., 1824.

² Act IV of 1905.

³ Act IX of 1890.

PART VII.

REVENUE COURTS.

CHAPTER LVII.

LANDLORD AND TENANT.

ALTHOUGH the Civil Courts are in general the proper tribunals to determine questions of title between contending claimants,¹ the Revenue Courts have power in many cases to determine questions between landlord and tenant. In determining such questions the Revenue Courts act as Civil Courts, and are competent to decide all incidental questions the determination of which is necessary for the disposal of the main issue arising in the case.²

Before the jurisdiction of the ordinary Courts of the country can be excluded by a special Court, such as a Revenue Court, there must be clear words in an enactment excluding such jurisdiction.³

Province of Agra.

The powers of the Courts in questions between landlord and tenant in the Province of Agra are to be found in the Agra⁴ Tenancy Act, 1901.⁵

As to Oudh, see *post*, pp. 597-604.

That Act extends to the Province of Agra, except the following areas.⁶

- i. The Kumaun Division, consisting of the districts of Naini Tal, Almora and Garhwal.

¹ *Jugut Shobhun Chunder v. Binaud Chunder* (1888), 9 Cal., 925; *Purnamal Deka Kohta v. Mayaram Deka Kohta* (1882), 10 C. L. R., 201; *Jagannath v. Ajudhia Singh* (1912), 35 All., 14; *Birham Khushal v. Sumera* (1918), *ibid.*, 299.

² *Sethurama Ayyangar v. Suppiah Pillai* (1917), 41 Mad., 121.

³ *Sashi Bhusan Hasra v. Eshabar Ali (Shcikh)* (1915), 19 C. W. N., 686; *Bhup v. Ram Lal* (1911), 33 All., 795; *Kumood Narain Bhoop v. Purna Chunder Roy* (1878), 4 Cal., 547; 3 C. L. R., 258.

⁴ U. P. Act I of 1904 s. 28 (2).

⁵ U. P. Act II of 1901.

⁶ S. I (2), Sch. I.

ii. The portion of the Mirzapur district lying to the south of the Kaimur Range.

iii.¹ . . .

iv. The tract of country known as Jaunsar-Bawar in the Dehra Dun district.

Provided that the Local Government may, by notification in the Gazette, extend the whole or any part of this Act to all or any of the areas so excepted.

Provided also that no provision of the Act which is inconsistent with the provisions of the Pargana of Kaswar Raja Act, 1915, shall apply to the Pargana of Kaswar Raja in the district of Benares.²

This Act has been continued in force (with modifications) in territory transferred to the Delhi Province.³

It contains the following provisions :

"Section 32.—(2) No suit or other proceeding for the division of a holding⁴ or distribution of the rent thereof shall be entertained in any Civil or Revenue Court."

This does not apply to a suit for possession⁵ or for a declaration of right.⁶

"Section 41.—(1) The rent of an ex-proprietary or occupancy tenant shall be liable to enhancement or abatement only by registered agreement or by a decree or order of a Revenue Court."

The following orders cannot be questioned in any Civil or Revenue Court :

(1) An order of the Collector sanctioning the remission of rent by a Court decreeing arrears.⁷

(2) An order remitting or suspending payment of rent when payment of revenue is remitted or suspended.⁸

By section 52 of the Agra Tenancy Act⁹ the Local Government may invest a Collector or Assistant Collector of the first

Settlement,
etc., of rents.

¹ U. P. Act VI of 1915, s. 2.

² *Ibid.* s. 3, *post*, pp. 553, 554.

³ Act VII of 1915, s. 3, Sch. III.

⁴ This does not apply to a rent-free grant: *Sagar Mal v. Makhan Lal* (1908), 81 All., 49, or to a suit for possession of a portion of a holding: *Kedar v. Deo Narain* (1915), 37 All., 656.

⁵ *Kedar v. Deo Narain* (1915), 37

All., 656.

⁶ *Najib-ul-lah v. Gulsher Khan* (1909) 81 All., 348; *Ashiq Husain v. Asghari Begam* (1907), 80 All., 90; *Ayub Ali Khan v. Mashuq Ali Khan* (1908), 81 All., 51.

⁷ U. P. Act II of 1901, s. 50.

⁸ *Ibid.* s. 51.

⁹ As amended by Act XXXVIII of 1920, Sch. I.

class either generally or with reference to specified cases or classes of cases with—

- (a) power to settle all rents :
- (b) power to reduce rents ;
- (c) power to commute produce rents into money rents.

This does not apply to rents payable by permanent tenure-holders or fixed-rate tenants.¹

An appeal lies against an order made under that section ; Appeal but otherwise no order under that section can be questioned in any Civil or Revenue Court.²

“Section 56. No tenant shall be ejected otherwise than in Ejection. accordance with the provisions of this Act.”³

When the local area is under settlement, a suit by a ^{Suit for} proprietor of a mahal or part of a mahal to resume possession ^{resumption} of, or to have rent assessed on, any land situate in such mahal ^{when local} or part of a mahal purporting to be held rent free, or to have ^{area under} the holder thereof declared to be liable to pay the revenue ^{settlement.} assessed on it shall be instituted in the Court of the settlement officer, who has the power of a Collector under chapter x of the Act.⁴

“Section 167. All suits and applications of the nature ^{Suits and} specified in the fourth schedule shall be heard and determined ^{applications} by the Revenue Courts ; and except in the way of appeal, as ^{cognizable} hereinafter provided, no Court other than a Revenue Court shall ^{by Revenue} take cognizance of any dispute or matter in respect of which ^{Courts only.} any such suit or application might be brought or made.”⁵

The High Court has no power of revision in these cases.⁶

A suit does not lie in a Civil Court having for its sole object the annulment of a decision of a Court of Revenue, having exclusive jurisdiction in the matter.⁷

A party to a suit in a Revenue Court cannot by raising an untenable plea of jurisdiction remove the case from a Revenue Court to a Civil Court.⁸

¹ S. 52 (3).

² S. 52 (5).

³ So a plaintiff who had failed in the Revenue Court cannot go to the Civil Court : *Narain Singh v. Gobind Ram* (1911), 38 All., 528.

⁴ S. 152. This does not apply to grove-land : *Hadi Hasan Khan v. Pati Ram* (1918), 35 All., 200.

⁵ *Sher Khan v. Debi Prasad* (1915), 37 All., 254.

⁶ *Damber Singh v. Srikrishn Dass* (1909), 81 All., 445 ; *Jamna Prasad v.*

Karan Singh (1918), 41 All., 28 ; *Muhammad Ehtisham Ali v. Lalji Singh* (1918), 41 All., 226 ; *Gaj Kumar Chandar v. Salamat Ali* (1919), 42 All., 88.

⁷ *Baljit v. Mahipat* (1918), 41 All., 208 ; *Kishore Singh v. Bahadur Singh* (1918), *ibid.* 97 ; *Sundar Kunwar v. Dina Nath* (1915), 37 All., 280 ; *Ram Das v. Dubri Koeri* (1923), 44 All., 724.

⁸ *Deo Narain Singh v. Sitta Baksh Singh* (1916), 40 All., 177.

The following is the 4th Schedule:—

GROUP (A).—SUITS.

“Suits triable, when not exceeding Rs.100 in value, by Assistant Collector of 2nd class—appeal to Collector; when exceeding Rs.100 in value, by Assistant Collector of 1st class—appeal to Civil Court.

Serial Number.	Section of Act.	Description of Suit.
1	76	For an adjudication as to the price of crops or other products which the landowner has elected to purchase under section 75.
2	102	For arrears of rent, ¹ or where rent ¹ is paid in kind for the money equivalent of such rent. ²
3	110	For compensation for refusing to deliver receipt for rent paid, or to credit the rent paid as requested by the tenant.
4	142	To contest a distraint.
5	145	To recover compensation for distraint and sale of property.
6	146	For compensation for wrongful acts of distrainer.
7	147 (2)	For recovery of the amount realised from a sub-tenant by proceedings in distraint.
8	159	By a lambardar to recover from a co-sharer arrears of revenue, village expenses, and other dues.
9	160	By a co-sharer to recover from a co-sharer who defaults arrears of revenue paid by the plaintiff on account of the defendant.
10	161	By a muafidar or assignee of revenue due to him as such.
11	162	By a taluqdar or other superior proprietor for arrears of revenue or rent due to him as such.

¹ “Rent” means “whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him, or on account of groves, tanks, rights of pasturage, or of gathering produce, forest-rights, fisheries, the use of water for irrigation, or the like”: s. 4 (3). This does not include the case of a person authorised to cut grass: *B. & N. W. Railway v. Bandhu Singh* (1909), 31 All., 342, or a suit for damages for the wrongful felling of trees: *Mansukh Ram v. Birjraj*

Saran Singh (1918), 40 All., 646, or a suit on an agreement between a tenant and his partner: *Ram Nath v. Sekhdar Singh* (1917), *ibid.*, 51.

As to the rent of a grove payable in kind, see *Raghubir Rai v. Madho* (1917), 39 All., 605. It means a contractual rent: *Sheoambar Ahir v. Collector of Azamgarh* (1912), 34 All., 358.

² *Raja Narendra Bahadur Pal v. Bafati* (1922), 45 All., 7.

GROUP (B).—SUITS.

Suits triable by Assistant Collector of 1st class, in which appeal (if any) lies to Civil Court.

Serial Number.	Section of Act.	Description of Suit.
12	86	For compensation for rent or produce exacted in excess of rent lawfully payable.
13	63	For the ejectment of a tenant on the ground specified in clause (b) ¹ or (c) ² of section 57. ³
14	65	For an injunction, or for the repairs of damage or waste, or for compensation.
15	103	For compensation for extortion of payment of rent.
16	164	By a co-sharer against a lambardar for his share of the profits of a mahal ⁴ or of any part thereof.
17	165	By a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of a mahal, or of any part thereof.

GROUP (C).—SUITS.

Suits triable by Assistant Collector of 1st class, in which appeal lies to Revenue Court.

Serial Number.	Section of Act.	Description of Suit.
18	31 (2)	For the cancellation of an illegal sub-lease or other transfer, or for the ejectment of the tenant and the sub-lessee or other transferee, or both. ⁵
19	31 (3)	For the cancellation of an illegal agreement to sub-let or otherwise transfer.
20	40 (1)	For the enhancement of the rent of a fixed-rate tenant.
21	40 (2)	For the abatement of the rent of a fixed-rate tenant.
22	42 (1)	For the enhancement of the rent of an ex-proprietary tenant.
23	42 (2)	For the abatement of the rent of an ex-proprietary tenant.
24	43 (1)	For the enhancement of the rent of an occupancy tenant.
25	43 (2)	For the abatement of the rent of an occupancy tenant.

¹ On the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let.

² On the ground that he or any person holding from him has broken a condition, not inconsistent with the provisions of this Act, and on breach of which he is by special contract with his landholder liable to be ejected.

³ As to a suit for damage by felling trees, see *Mansukh Ram v. Birjraj* (1918), 40 All., 646.

⁴ This does not include income derived from land and houses in the abadi: *Digbijai Singh v. Hira Devi* (1916), 38 All., 822.

⁵ *Lachman Das v. Nabi Bakhsh* (1908), 31 All., 109; *Umrui Singh v. Ewas Singh* (1918), 41 All., 270.

GROUP (C)—SUITS (*continued*).

Serial Number.	Section of Act.	Description of Suit.
26	48	For the enhancement of the rent of a non-occupancy tenant.
27	48	For the abatement of the rent of a non-occupancy tenant.
28	49	For the avoidance of a lease for period exceeding term of landholder's engagement with the Local Government.
29	63	For the ejectment of a non-occupancy tenant on the grounds specified in section 58. ¹
30	79	For the recovery of the possession of a holding, or for compensation, or both. ²
31	79	For compensation for an improvement brought after a suit for recovery of possession has failed as regards reinstatement of the tenant.
32	80	For compensation for ejectment under a decree or order subsequently reversed.
33	86	To set aside a notice of surrender.
34	95	For a declaration as to the following matters:—
		(a) the name and description of the tenant of the holding;
		(b) the class to which the tenant belongs;
		(c) the situation, area, numbered plots, or boundaries of the holding;
		(d) the rent ³ payable in respect of the holding, and whether payable in cash or kind;
		(e) the time, place, and manner of appraisal, division, or delivery of crops for rent; and
		(f) the dates on which, and the instalments in which, the rent is payable. ⁴

This schedule does not include a suit for a declaration as to the assignment of a lease⁵ or to a suit between rival claimants to possession of land as tenants.⁶ It includes a suit for ejectment on the ground that the lease was invalid, and a suit⁷ claiming a declaration of heirship to a deceased occupancy tenant.⁸

¹ As to land used for grazing purposes, see *Param Hansman Tiwari v. Dasrathman Tiwari* (1921), 43 All., 445, following *Rameshar Singh v. Madho Lal* (1919), 42 All., 86, and overruling *Abdul Qayum v. Fida Husain* (1919), 13 A. L. J., 854.

² *Badri Kasaundhan v. Sarju Mir* (1918), 36 All., 55; *Abdul Hasan v. Makhdum Bakhsh* (1917), 39 All., 455.

³ This does not apply to a custom to take fruit, wood, etc. It means a contractual rent: *Sheoambar Ahir v. Collector of Anamgarh* (1912), 34 All., 858.

⁴ As to a suit for mutation of names, see *Ram Charitra Rai v. Jinsi Ahirin* (1918), 36 All., 48. The Court cannot in such proceedings fix

the amount of the rent: *Ramcharan Lal v. Karimunnissa Bibi* (1914), 37 All., 12. Section 95 deals with questions between landlord and tenant only: *Kanhai Ram v. Durga Prasad* (1915), 37 All., 228, following *Jaganath v. Ajudhia Singh* (1912), 35 All., 14; *Bhup v. Ram Lal* (1911), 33 All., 795.

⁵ *Siddiqui Bibi v. Ram Autar Pande* (1917), 39 All., 675.

⁶ *Tapai Singh v. Hardeo Singh* (1917), 39 All., 711; *Kanhai Ram v. Durga Prasad* (1915), 37 All., 228; *Jagan Nath v. Ajudhia Singh* (1912), 35 All., 14.

⁷ *Ram Singh v. Girraj Singh* (1914), 37 All., 41.

⁸ *Ram Charitra Rai v. Jinsi Ahirin* (1918), 36 All., 48.

GROUP (C).—SUITS (*continued*).

Serial number.	Section of Act.	Description of Suit.
85	96	For a lease or counterpart.
86	150	For the resumption of a rent-free grant. ¹
	154	
87	150	For the assessment to rent of a rent-free ¹ grant.
	156	
88	150	For the assessment to revenue of a rent-free ¹ grant.
	158	

GROUP (D).—APPLICATIONS.

89	59	For the ejectment of a tenant on the ground specified in clause (a) of section 57.
40	85	For the service of a notice of surrender under section 83 or 84.
41	93	For permission to give compensation otherwise than by payment of money for an improvement made by a tenant.
42	94	For decision as to whether a work is an improvement, or as to right to make it.
43	105	For the deputation of an officer to make division, estimate, or appraisal of produce or crop.
44	111	For permission to deposit rent.
45	117	For payment or refund of rent deposited under section 111.
46	126	For assistance to distrainer against resistance or apprehension of resistance.
47	—	For the execution of a money decree under this Act, or under any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs.500, inclusive of the costs of executing such decree, but exclusive of any interest which may have accrued after decree upon the sum decreed.
48	—	For the execution of such a decree when exceeding Rs.500.
49	—	For the execution of any decree other than a money decree.
50	183, 184	For a review of judgment.
51	185	For revision.

In a suit for the ejectment of a tenant, a Revenue Court can determine finally the validity of a lease,³ or other matters necessary to be determined.

A Civil Court can entertain a suit by a rent-free grantee to recover possession.⁴

¹ This does not apply to grove-land: *Hadi Hasan Khan v. Pati Ram* (1918), 85 All., 200.

² *Nannhu v. Thakurji Maharaj* (1918), 41 All., 37.

³ *Ram Singh v. Girraj Singh* (1914), 87 All., 41.

⁴ *Gobind Rai v. Banwari Lal* (1920), 42 All., 412.

Grades of Courts.

Powers of
Assistant
Collector,
2nd class.

"Section 171. An Assistant Collector of the 2nd class shall have power to dispose of all suits included in Group (A) in which the value of the subject-matter does not exceed one hundred rupees, and all applications included in Group (D) of the fourth schedule, except an application under section 94.

Powers of an
Assistant
Collector,
1st class.

"Section 172. An Assistant Collector of the 1st class shall have power to dispose of all suits and applications specified in the fourth schedule :

"Provided that no Assistant Collector shall have power to try suits under sections 40, 42, 43, and 48, unless he is empowered by the Local Government in that behalf.

Powers of
Collectors.

"Section 173. A Collector shall have all the powers conferred on an Assistant Collector of the 1st class and on a Collector by this Act.

Courts in
which pro-
ceedings to be
instituted.

"Section 174. Notwithstanding anything contained in section 15 of the Code of Civil Procedure, 1908¹ :

(a) all suits included in Group (A), in which the value of the subject-matter does not exceed one hundred rupees, and all applications included in Group (D) of the fourth schedule shall, except as provided in section 59 and section 94, be filed in the Court of the Tahsildar ;

(b) all suits included in Group (A), in which the value of the subject-matter exceeds one hundred rupees, and all suits included in Group (B) and Group (C) of the fourth schedule, and all applications under section 94, shall be filed in the Court of the Assistant Collector in charge of the sub-division :

"Provided that if there is no Assistant Collector in charge of the sub-division, all such suits shall be filed in the Court of the Collector.

Appeal to be
as allowed by
Act.

"Section 175. No appeal shall lie from any decree or order passed by any Court under this Act except as hereinafter provided."

This does not prevent an appeal under clause 10 of the Letters-Patent of the High Court of Allahabad (*ante*, p. 72).²

¹ Act V of 1908.

26 All., 375.

² *Zamin Ali Khan v. Genda* (1904),

Appeals from Assistant Collectors of the 2nd Class.

"Section 176. An appeal shall lie to the Collector from the decree or order of an Assistant Collector of the 2nd class in the following cases :

Appeals from
decrees or
orders of
Assistant
Collectors,
2nd class.

- (a) from a decree in any of the suits included in Group (A) of the fourth schedule ;
- (b) from an order on any of the applications included in Group (D) of the fourth schedule ;
- (c) from an order relating to the trial of a suit or application."

Appeals from Assistant Collectors of the 1st class.

"Section 177. An appeal shall lie to the District Judge from the decree¹ of an Assistant Collector of the 1st class in any of the suits included in Group (A) and Group (B) of the fourth schedule in which :

Appeals to
District Judge
and High
Court.

- (a) the amount or value of the subject-matter exceeds one hundred rupees ; or
- (b) the rent payable by a tenant has been a matter in issue in the Court of first instance, and is a matter in issue in the appeal ; or
- (c) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the Court of first instance, and is a matter in issue in the appeal ;

and in any suit under sections 159 (by lambardar for arrears of revenue), 160 (by co-sharer for ditto), 161 (by a muafidar for ditto), 162 (by a taluqdar, etc. for ditto), 164 (for profits against lambardar), and 165 (for profits against co-sharer), in which :

- (d) the amount of the revenue annually payable has been a matter in issue in the Court of first instance, and is a matter in issue in the appeal ;

and in all suits in which—

- (e) a question of proprietary² title has been in issue in the

¹ This does not include an order rejecting an application for restitution of possession under s. 144 of the Act: *Kashi Prasad Singh v. Balbhaddar Singh* (1922), 44 All., 288.

² *Karehru v. Mathura Prasad* (1919), 41 All., 818. This does not

include the question whether a tenant defendant in a suit for ejectment, is a tenant of one kind or another: *Niranjan v. Gajadhar* (1908), 80 All., 138; *Daulatia v. Har Gobind* (1920), 43 All., 18.

Court of first instance, and is a matter in issue in the appeal;¹ or

(f) a question of jurisdiction has been decided:²

"Provided that when the amount or value of the suit exceeds five thousand rupees, the appeal shall lie to the High Court."³

An erroneous appeal to the Commissioner instead of to the Judge does not interfere with the finality of the decree of the lower Court.⁴

Appeals to Board.

"Section 178. An appeal shall lie to the Board from the order of an Assistant Collector of the 1st class under section 52 (settlement, reduction and commutation of rents).

Appeals to Commissioner.

"Section 179. An appeal shall lie to the Commissioner from the decree of an Assistant Collector of the 1st class in any of the suits included in Group (C) of the fourth schedule and from an order rejecting an application under section 59 (in ejectment), or allowing further time under section 61 (time for payment of arrears).

Appeals from decrees and orders of Collector.

"Section 180.—(1) An appeal shall lie from an original decree or order of a Collector in the same manner and under the same conditions as from a decree or order of an Assistant Collector of the 1st class.

"(2) An appeal shall lie to the District Judge from an appellate decree of a Collector in any of the suits included in Group (A) of the fourth schedule in which :

(a) a question of proprietary title has been in issue in the first Appellate Court, and is a matter in issue in the appeal; or

(b) a question of jurisdiction has been decided."⁵

No appeal lies from an appellate order of the Collector.⁶

¹ *Binderi Pande v. Gokul* (1914), 36 All., 188, overruling *Udit Tiwari v. Bihari Pande* (1918), 35 All., 521; *Ganga Prasad v. Har Narain* (1916), 38 All., 465; *Maharaja of Benares v. Baldeo Prasad* (1910), 38 All., 280; *Bharat Indu v. Yakub Hasan* (1918), 35 All., 159.

² *Gokaran Singh v. Ganga Singh* (1919), 42 All., 91; *Ratan Singh v. Pran Sukh* (1920), 43 All., 368. A party to a suit in a Revenue Court cannot, by merely raising an absolutely untenable plea of jurisdiction, remove the case from the Revenue to a Civil Court: *Deo Narain Singh v.*

Sitla Bakhsh Singh (1916), 40 All., 177.

³ This does not include an appeal from an order staying or refusing to stay proceedings: *Kirpa Devi v. Ram Chandar Sarup* (1917), 40 All., 219.

⁴ *Genda v. Sukh Nath Rai* (1907), 30 All., 25.

⁵ I.e. decided by the Collector as an Appellate Court: *Zamin Ali Khan v. Genda* (1904), 26 All., 375. The mere fact that the question was raised is insufficient: *ibid.*

⁶ *Dhanti Ram v. Bhola Singh* (1904), 27 All., 21. As to what are "orders," see Act V of 1908, s. 2: *ibid.*

"Section 181. A second appeal on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908, shall lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs. Appeals from decrees of Commissioner.

"Section 182. A second appeal shall lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of sections 100-103 of the Code of Civil Procedure, 1908."¹ Appeals from decrees of District Judge.

There is no third appeal from a decision of a Judge passed in second appeal.²

"Section 183. The Board, on the application of a party to the case, may review and may rescind, alter, or confirm any decree or order made by itself or by a single member. Review by Board.

"Section 184. Every other Court shall be competent to review its judgment in accordance with the provisions of section 114 *et seq.* of the Code of Civil Procedure, 1908. Review by other Courts.

"Section 185. The Board may, on the application of a party to the case, or on report made, or of its own motion, call for the record of any case which has come before any subordinate Revenue Court, other than a suit in which the decree is appealable under section 177, in which the Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to have exercised a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity,³ and may pass such order thereon as the Board thinks fit." Power of Board to call for cases.

In the absence of an appeal and of an order of revision the order of the Court below is final.⁴

"Section 186. Section 24 of the Code of Civil Procedure, 1908, shall apply only to the transfer of appeals under this Act by the High Court from the Court of one District Judge to the Court of another District Judge. Transfer of cases by High Court.

¹ There is no appeal from an order of remand made by the Judge on appeal: *Gulsari Lal v. Latif Husain* (1916), 38 All., 181; *Anandgir v. Sri Niwas* (1918), 40 All., 652; *Naubat Singh v. Baldeo Singh* (1911), 38 All., 479; *Vilayet Husen v. Mahendra Chandra Nandy* (1905), 28 All., 88;

Zahur Ali v. Sher Ali (1905), 28 All., 283.

² *Lachmi Narain v. Nirodam Das* (1906), 29 All., 69.

³ Cf. *ante*, p. 355.

⁴ *Sundar Kumar v. Dina Nath* (1915), 37 All., 280.

Transfer of
cases by
Board.

"Section 187. The Board may, on sufficient cause being shown, transfer any suit, application or appeal or class of suits, applications or appeals, from any Revenue Court to any other Revenue Court competent to deal therewith.

Transfer of
cases by
Commissioner.

"Section 188. A Commissioner may exercise the same powers within the limits of his division as the Board under the last preceding section.

Transfer of
appeals by
Commissioner
to Collector.

"Section 189.—(1) A Commissioner may, with the previous sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector or Additional Collector within his division.

"(2) The order passed by a Collector or Additional Collector¹ on an appeal transferred to him by a Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner.

"(3) The Local Government may by order recall any appeal or class of appeals transferred to a Collector or Additional Collector¹ under sub-section (1), and refer the same for disposal to the Commissioner.

Transfer of
cases by
Collector or
Assistant
Collector.

"Section 190. A Collector or an Assistant Collector in charge of a sub-division may transfer any case or class of cases, pending before himself, to any subordinate Court competent to deal therewith.

Withdrawal of
cases by
Collector or
Assistant
Collector.

"Section 191. A Collector or an Assistant Collector in charge of a sub-division may withdraw any case or class of cases from any Court subordinate to him, and may try such case or class of cases himself, or transfer the same to any other subordinate Court competent to deal therewith."

Power to refer
to High Court
question as to
jurisdiction.

"Section 195.—(1) If in any suit, application or appeal filed in a Civil or Revenue Court, the Court doubts whether such suit, application or appeal should be filed in a Civil or a Revenue Court, it may submit the record, with a statement of the reasons for its doubt, to the High Court.

"(2) If the Court is a Revenue Court subordinate to a Collector, no such reference shall be made except with the sanction of the Collector previously obtained.

"(3) On any such reference being made the High Court may order the Court either to proceed with the case or to return the plaint, application, or appeal for presentation to such other Court as it may declare to be competent to try the same.

¹ U. P. Act III of 1920, s. 3.

"(4) The order of the High Court on any such reference shall be final.

"Section 196. When, in a suit instituted in a Civil or Revenue Court, an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the Appellate Court unless such objection was taken in the Court of first instance; but the Appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

As to plea in appeal that suit was instituted in wrong Court.

"Section 197.—(1) If in any such suit such objection was taken in the Court of first instance, but the Appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure when such objection was taken in Court of first instance.

"(2) If the Appellate Court has not before it all such materials, and remands the case, or frames and refers issues for trial, or requires additional evidence to be taken, it may direct its order either to the Court in which the suit was instituted, or to such Court as it may declare to be competent to try the same.

"(3) No objection shall be taken or raised in appeal or otherwise to any such order on the ground that it has been directed to a Court not competent to try the suit."

These powers can be exercised by a Subordinate Judge to whom an appeal has been transferred under the Bengal, Agra, and Assam Civil Courts Act.¹

"Section 198.—(1) When, in any suit against a tenant² under this Act, the defendant pleads that the relation of landholder and tenant does not exist between the plaintiff and himself on the ground that he actually and in good faith pays the rent of his holding to some third person, the question of such payment of the rent to such third person shall be inquired into, and if the question is decided in favour of the defendant, the suit shall be dismissed.

Denial of relationship of landlord and tenant.

"(2) The decision of the Court on such question shall not affect the right of any person entitled to the rent of the holding to establish his title in the Civil Court.³

¹ Act XII of 1887, s. 22, cl. 3, *ante*, p. 113: *Afsal Shah v. Muhammad Abdul Karim Khan* (1915), 87 All., 232.

² *Udit Tewari v. Bihari Pande*

(1913), 35 All., 521.

³ *Sham Das v. Bahadur Singh* (1920), 48 All., 825.

Procedure
when de-
fendant pleads
he is not a
tenant.

"Section 199.—(1) If in any suit or application filed in a Revenue Court against a person alleged to be the plaintiff's tenant the defendant pleads that he is not a tenant, but has a proprietary right in the land,¹ and such question of title has not been already determined by a Court of competent jurisdiction, the Court may either :

(a) by order in writing require the defendant to institute, within three months, a suit in the Civil Court for the determination of such question of title, or

(b) determine such question of title itself.²

"(2) When an order has been passed under clause (a) of sub-section (1), if the defendant fails to comply with it, the Court shall decide such question of title against him. If the defendant institutes the suit in compliance with the order, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be, upon such question of title.

"(3) If the Revenue Court decides to determine such question of title itself, it shall follow the procedure laid down in the Code of Civil Procedure for the trial of suits, and, notwithstanding anything contained in section 198 of this Act, all the provisions of the said Code shall apply to the trial of such question of title.

Procedure in
appeal.

"Section 200. If any such question of title has been determined by a Revenue Court, and is a matter in issue in appeal in the Court of the District Judge or the High Court, and such Appellate Court has not before it all the materials necessary for the determination of such question of title, it may either :

(a) remand the case to the Revenue Court, or

¹ *Sheo Dihal Singh v. Badri Narain Singh* (1905), 33 All., 61. This does not include a claim of a right to transfer by custom: *Lachman Das v. Nabi Bakhsh* (1908), 31 All., 109, or to a case where there was a plea that the defendant held under an unexpired lease: *Suraj Mal v. Hira Kunwar* (1914), 37 All., 94.

² The question of title cannot be re-opened in a Civil Court: *Sundar Kunwar v. Dina Nath* (1915), 37 All.,

280; *Bed Saran Kunwari v. Bhagat Deo* (1911), 33 All., 453; *Beni Pande v. Kausal Kishore Prasad Mal Bahadur (Raja)* (1906), 29 All., 160; *Bihari v. Sheobalak* (1907), 29 All., 601; *Lal Singh v. Khaliq Singh* (1909), 31 All., 323. Even if the Civil Court suit may be beyond the pecuniary jurisdiction of the Revenue Court: *Shaksade Singh v. Muhammad Mehdi Ali Khan* (1909), 32 All., 8.

- (b) frame issues with respect to such question of title, and refer them for trial to any subordinate Civil Court of competent jurisdiction.

"Section 201.—(1) If in any suit instituted under the provisions of chapter xi the plaintiff is not recorded as having the proprietary right entitling him to institute such suit and the defendant pleads that the plaintiff has not such proprietary right, the Court shall proceed, *mutatis mutandis*, as directed in section 199 :

Procedure when plaintiff's title in suit under chapter xi denied.

"Provided that if the Court adopts the procedure allowed by clause (a) of sub-section (1) of that section, the plaintiff shall be the party required to institute a suit in the Civil Court.

"(2) The provisions of section 200 shall apply, *mutatis mutandis*, to any appeal in such suit.

"(3) If the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it; ¹ but nothing in this sub-section shall affect the right of any person to establish by suit in the Civil Court that the plaintiff has not such proprietary right.

"Section 202.—(1) If, in any suit relating to an agricultural holding² instituted in a Civil Court, the defendant pleads that he holds such land as the tenant of the plaintiff, or of a person in possession holding from the plaintiff, the Civil Court shall, by order in writing, require the defendant to institute, within three months, a suit in the Revenue Court for the determination of such question.³

When Civil Court to refer party to Revenue Court.

"(2) If the defendant fails to comply with the order, the Court shall decide such question against him. If the defendant institutes the suit in compliance with the order, the Civil Court shall dispose of the suit pending before it in accordance with the final decision of the Revenue Court of first instance or appeal, as the case may be, upon such question."⁴

By the Pargana of Kaswar Raja Act, 1911,⁵ which applies to the pargana of Kaswar Raja in the district of Benares, any suit or proceeding cognizable by a Revenue Court under the

Pargana of Kaswar Raja.

¹ *Lachman Prasad v. Shitabo Kunwar* (1920), 43 All., 177; *Mubarak Fatima v. Muhammad Quli Khan* (1921), *ibid.* 697.

² *Amina Bibi v. Suiyid Yusuf* (1922), 44 All., 748.

³ *Raghunath v. Ganesh* (1919), 42 All., 222.

⁴ *Bhawan v. Madan Mohan Lal* (1916), 38 All., 583; *Kura Singh v. Ohhallu* (1911), 33 All., 507.

⁵ U. P. Act I of 1911, s. 6.

rent or revenue law applicable to Agra which would before the commencement of this Act have been brought in the Court of :

- (i) the Raja, the Native Commissioner, or any other of the Raja's officers,
 - (ii) the Deputy Superintendent, or
 - (iii) the Superintendent or the Board of Revenue,
- shall be brought in the Court of :
- (i) the Assistant Collector having jurisdiction,
 - (ii) the Collector, or
 - (iii) the Commissioner respectively.

Ajmere.

The Ajmere Land and Revenue Regulation, 1877,¹ contains the following provisions with regard to rent :

"Section 42. When the rent of an ex-proprietary² or other occupancy tenant has not been fixed at settlement, or when the rent was then fixed but the term for which it was then fixed has expired, such tenant or his landlord may apply to the Revenue Officer to fix the rent of such land."³

When the rent of land is payable by a division of the crop, the Revenue Officer may divide the crop subject to a suit by either party.⁴

When the rent is determined by an estimate of the crop, such officer may estimate the standing crop and declare the rent payable.⁵

Either party may sue to set aside such declaration on the ground that the estimate on which it is based was made in bad faith and on no other ground.⁶

As to grounds for enhancement during the term for which rent has been fixed, see section 44.

Assam.

Jurisdiction of
Civil Courts.

In Assam all suits brought for any cause of action arising under the Landlord and Tenant Procedure Act, 1869 (Bengal

¹ Reg. II of 1877.

² As to the definition of an "ex-proprietary" tenant, see s. 41.

³ S. 42. As to the mode of deter-

mining the rent, see s. 43.

⁴ Ss. 48, 49.

⁵ S. 50.

⁶ S. 51.

Act VIII of 1869), are cognizable by the Civil Courts according to their several jurisdictions.¹

The cause of action in suits brought for the delivery of any *patta* or *kabuliyat*, or for the cancelment of any lease, for the determination of rates of rent, for illegal exaction of rent, cess or impost, for refusal of receipts for rent paid, for extortion of rent, for excessive demand of rent, for abatement of rent, for arrears of rent, and for refusing to register transfers, successions or divisions under section 26 of the Act, are deemed to have arisen within the jurisdiction of the Court which would have had jurisdiction to entertain a suit for the recovery of the land or other immovable property in relation to which the cause of action arose can only be brought in such Court.²

If such land be situate within the jurisdiction of different Courts, the provisions of section 17 of the Civil Procedure Code apply to such suits.³

By section 37 of the Act, in case of opposition to measurement by the occupant of the land, the person claiming the right to measure such land may apply to establish his right to measure such land in the Court which would have had jurisdiction in case such suit had been brought for the recovery of such land.

An appeal lies to the High Court for an order under this section.⁵

Section 38 provides for the measurement of the lands comprised in an estate or tenure by order of the Court when it cannot be ascertained who are liable for the rent.

An appeal lies to the High Court from proceedings taken under this section,⁶ but no appeal lies from an order for measurement.⁷

The Act does not confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed

¹ Ben. Act VIII of 1869, s. 33. Extended to Sylhet.

² *Ibid.* s. 35.

³ Act V of 1908, *ante*, p. 316.

⁴ Ben. Act VIII of 1869, s. 36.

⁵ *Brojendro Coomar Roy v. Krishna Coomar Ghose* (1881), 7 Cal., 684; 9 C. L. R., 444.

⁶ *Omed Ali v. Nittyanund Roy* (1875), 24 W. R. C. R., 171.

⁷ *Kally Churn Dutt v. Protap Chunder Ghose* (1879), 5 C. L. R., 487.

⁸ This covers all proceedings before or after decree: *Krishto Coomar Chuckerbutty v. Anund Coomar Dutt* (1878), 19 W. R. C. R., 807; *Kedarnath Biswas v. Huro Pershad Roy Chowdhry* (1875), 23 W. R. C. R., 207.

Cause of action.

Jurisdiction in certain suits.

Cause of action in different jurisdictions.

Opposition to measurement.

No appeal from District Judge below Rs.100.

does not exceed one hundred rupees, in which suit a question of right to enhance or vary the rent of a raiyat or tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment.¹

Small Cause Court not to have jurisdiction.

The Act does not confer upon any Court sitting as a Court of Small Causes cognizance of any suit brought under the provisions of the Act, of which it would not have had cognizance if the Act had not been passed.²

Suits for rates, etc.

By the Assam Local Rates Regulation, 1879, suits for the recovery from co-sharers, tenants, or others of any sum on account of a rate imposed on any land under that Regulation, and suits on account of illegal exaction of such rate or for the settlement of accounts of such rate are cognizable by the Courts which under the law, for the time being in force, have cognizance of suits for rent due on such land, and by no other Courts.³

Rent Recovery Act, 1858.

The Rent Recovery Act, 1858,⁴ which is in force in the district of Sylhet, gives to independent Deputy Collectors powers with regard to the sales of patni taluqs and to the rent thereof.

Bengal.

Bengal Rent Act, 1859.

The Bengal Rent Act, 1859,⁵ which now applies only to certain parts of the Scheduled Districts, had as its object the re-enactment of existing laws relative to the rights of tenants.⁶

The following suits are cognizable by Collectors only:⁷

Cognizance of suits under Act.

"Section 23.—(1) All suits for the delivery of pattas or kabuliyats or for the determination of the rates of rent at which such pattas or kabuliyats are to be delivered."

As to the case where the purchaser of an under-tenure does not register, see Ben. Act VIII of 1865, s. 17.

"(2) All suits for damage on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of

¹ Ben. Act VIII of 1869, s. 102.

² *Ibid.* s. 104. *Brojonath Dey v. Shumbhoo Chunder Chatterjee* (1872), 18 W. R. C. R., 25.

³ Regulation III of 1870, s. 18.

⁴ Act VI of 1858.

⁵ Act X of 1859. This Act is to be read with the Bengal Rent Act, 1862 (Ben. Act VI of 1862): s. 21 of the

latter Act. The only portion of the Bengal Presidency in which Act X of 1859 appears to be in force is the Darjeeling District: Bengal Code, edn. 1913, p. 886, n. 1.

⁶ *Leelanund Singh (Rajah) v. Nirput Mahtoon* (1872), 17 W. R. C. R., 306.

⁷ S. 23.

the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress ;

" (3) all complaints of excessive demands of rent, and all claims to abatement of rent ;¹

" (4) all suits for arrears of rent due on account of land² either *khiraji*,³ *lakhiraj*,⁴ or on account of any rights of pasturage, forest-rights, fisheries or the like ;⁵

" (5) all suits to eject any tenant or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a *raiayat* may be liable to ejectment or a lease may be liable to be cancelled ;

" (6) all suits to recover the occupancy or possession of any land, farm, or tenure, from which a *raiayat*, farmer, or tenant has been illegally ejected by the person entitled to receive rent of the same ;⁶

" (7) all suits arising out of the exercise of the power of distraint conferred on zemindars or others by sections 112 and 114 of the Act, or out of any acts done under colour of the said power.

" Section 24. Suits by zemindars and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for moneys received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by Collectors, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act."⁷ Suits against agents.

There is also power given to a Collector to deal with applications to eject any cultivator not having a right of occupancy, or farmer, or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency or to enforce any Ejectment of cultivators, etc.

¹ *Nilmani Sing (Raja) v. Annadaprasad Mookherjee* (1868), 1 B. L. R. F. B., 98.

² I.e. cultivated land : *Mahananda Chakravarti v. Mongala Keotani* (1904), 31 Cal., 987 ; 8 C. W. N., 804.

³ Revenue paying.

⁴ Revenue free.

⁵ This does not apply to a tank which does not appertain to an agricultural holding : *Mahananda Chakravarti v. Mongala Keotani* (1904), 31 Cal., 987 ; 8 C. W. N., 804.

⁶ See *Jamla Singh v. Kingsley* (1918), 17 C. W. N., 1201.

⁷ See *Grant v. Ram Tonoo Bhoomick* (1868), 10 W. R. C. B., 83.

attachment or ejection expressly authorised by any Regulation or Act.¹

The Civil Courts have cognizance of all suits necessary to enforce the right given by section 7 of Act X of 1859 to the transferee of a permanent transferable interest in land registered in the sherista of the zemindar.²

In what Court
suits are to be
instituted.

“Section 20. Suits under this Act (Bengal Act VI of 1862), or under Act X of 1859, shall be preferred in the Revenue Office of the district, or, when a sub-division of a district has been placed under the jurisdiction of a Deputy Collector in the Revenue Office of the sub-division in which the cause of action shall have arisen, or when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a sub-division, but who has been specially authorised by Government to receive such suits, then in the office of such last-named Deputy Collector :

“Provided always that the Collector may withdraw any suit from any Deputy Collector and try it himself, or refer it to another Deputy Collector.

“If the lands comprised in any *taluk*, farm, or other tenure, or any lands held under one lease or engagement, or at an entire rent, in respect of which arrears of rent may be due, are situated in more than one district or sub-division, or within the local limits of the jurisdiction of more than one Deputy Collector so specially authorised as aforesaid, the district, or sub-division or local limits in which the greater part of such lands is situate shall be held to be the district or sub-division or local limits in which the cause of action has arisen ; and if any question shall be raised respecting the district or sub-division or local limits within which the greater part of the land is situate, the Board of Revenue³ or, if all the lands be situate in one district, the Collector of the district, shall decide the question ; and such decision shall be conclusive on the point of jurisdiction.”⁴

Appeals.

In all cases in which a Collector sets aside a judgment in default or for non-appearance⁵ the order is final, but if he

¹ S. 25. No appeal lies to the District Court from a decision of the Collector : *Amra Nashya v. Gagan Shutar* (1869), 2 B. L. R. App., 35 ; 11 W. R. C. R., 130.

² *Madhab Chandra Pal v. Hills*

(1868), 1 B. L. R. A. C., 175 ; 10 W. R. C. R., 197.

³ See now Bengal Board of Revenue Act, 1913 (Ben. Act II of 1913).

⁴ Ben. Act VI of 1862, s. 20.

⁵ Act X. of 1859, s. 58.

refuses the application there is an appeal from the order of rejection to the tribunal to which the final decision in the suit would be appealable.¹

No appeal lies from an order of the Collector adjudicating upon a claim to property taken in execution or for compensation when the right of the claimant is not made out,² or upon a claim to an undertenure taken in execution.³

"Section 151. In the performance of their duties under the Act Collectors and Deputy Collectors are subject to the general direction and control of the Commissioners and the Boards of Revenue; and Deputy Collectors are subject to the direction and control of the Collectors to whom they are subordinate.

Control of
Collectors
and Deputy
Collectors.

"All orders passed by a Collector under the Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof, or orders passed after decree and relating to the execution thereof, are appealable to the Commissioner; and all orders passed by a Deputy Collector are appealable to the Collector, but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, are open to revision or appeal otherwise than as expressly provided in the Act."

No appeal
from orders in
certain cases.

Orders passed in appeal by a Commissioner or a Collector are not open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.⁴

Revision.

In suits under clauses (2),⁵ (4),⁶ and (7)⁷ of section 23 and under section 24⁸ of the Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector is final and not open to revision or appeal except on the ground of the discovery of new evidence on matter material to the issue,⁹ unless in any such suit a question of right to enhance or otherwise vary the rent of a *raiyat* or tenant, or

When appeal
from judgment
of Collector for
money under
100 Rupees.

¹ Ben. Act VI of 1862, s. 13.

² Act X of 1859, s. 108. The party against whom the order may be given may bring a suit in the Civil Court to establish his right: *ibid.*

³ *Ibid.* ss. 106, 107.

Act X of 1859, s. 152.

Ante, pp. 556, 557.

Ante, p. 557.

Ibid.

Ibid.

Act X of 1859, s. 154.

any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment is open to appeal as provided in sections 160 and 161 of the Act.¹

Appeal from
decision of
Deputy
Collector.

"Section 155. When any such suit, as aforesaid, in which if tried by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector lies to the Collector."²

Appeal to
District Judge.

"Section 160. In all suits other than those in which, when tried by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector lies to the District Judge; unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal lies to the High Court."

No jurisdiction
in Collector as
to lands
beyond
district.

"Section 163. No Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

Deputy
Collector's
jurisdiction.

"Section 164. No Deputy Collector appointed under Bengal Regulation IX of 1833 (settlement officers), shall exercise any judicial powers or other jurisdiction under the Act if entrusted with any police-functions.

Assistant
Collectors.

"Section 165. Assistants to Collectors shall not exercise any powers under the Act unless invested by Government with the powers of Deputy Collectors, in which case they may exercise the powers of Deputy Collectors."

Bengal Rent
Act, 1862.

An appeal lies to the District Judge from a decision of a Collector,³ or of a Deputy Collector,⁴ in a suit under section 9 of Bengal Act VI of 1862 (as to survey or measurement).

Bengal
Tenancy Act,
1885.

The Bengal Tenancy Act, 1885 (VIII of 1885), applies⁵ to

¹ S. 153.

² As to the power of the Government to appoint a Revenue Officer to hear such appeals, see Ben. Act IV of 1867, s. 5.

³ *Taruck Nath Mookerjee v. Meydee Biswas* (1866), 5 W. R., Act X, R. 17;

Manmohini Chowdhraïn (Srimati) v. Premchand Roy (1870), 6 B. L. R., 1; 14 W. R. F. B., 4.

⁴ *Erskine v. Gholam Khesur* (1868), 9 W. R. C. R., 520.

⁵ S. 1 (3).

all the territories then being under the administration of the Lieutenant-Governor of Bengal,¹ except the town² of Calcutta, any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884,³ or part thereof, and specified in a notification in this behalf by the Local Government,⁴ the division of Orissa,⁵ and the Scheduled Districts specified in the third part of the first schedule of the Scheduled Districts Act, 1874.⁶

As to the meaning of "rent" under that Act, see section 3 (5), and *Maharaja Kesho Prasad Singh v. Ramdeni Singh* (1922), 2 Pat., 188.

The Act contains the following (amongst other) provisions :

By section 40 of the Act power is given to the Collector or Sub-divisional Officer or Settlement Officer to commute rents payable in kind.⁷ Commutation of rent payable in kind.

No suit lies in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under chapter viia (restriction on alienation of land by aboriginals), except on the ground of fraud or want of jurisdiction.⁸ Bar to suits.

By section 64 (4) no suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections of the Act, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section. Payment of deposit.

The Collector may appoint an officer to appraise or divide the produce, when there is a dispute as to the quantity, value, or division,⁹ and he may refer any question in dispute Appraising and dividing produce.

¹ This now includes the territories subject to the Governors of Bengal, and Bihar and Orissa.

² See *Biraj Mohini Dassi v. Gopewar Mallick* (1899), 27 Calc., 202.

³ Ben. Act III of 1884.

⁴ The Governor in Council of Fort William in Bengal. See Ben. Act I of 1907, s. 3 (1); E. B. and A. Act I of 1908, s. 3.

⁵ B. and O. Act II of 1918, Sch. I.

⁶ I.e. the Jalpaigori and Darjeeling Divisions, the Hill Tracts of Chittagong, the Santhal Parganas, the

Chota Nagpur Division, and the Mahals of Angul and Banki.

⁷ *Mohesh Dutta Sukla v. Basir (Sheikh)* (1920), 25 C. W. N., 714.

⁸ Inserted by Ben. Act II of 1918, s. 2.

⁹ Act VIII of 1885, ss. 69, 70. This includes a dispute as to shares: *Bhajan Ahir v. Gangeshwar Kuar* (1919), 5 Pat. L. J., 76; [1919 Pat.], 461. As to when proceedings bar a civil suit, see *Suraj Prasad v. Karu Singh*, [1919 Pat.], 400.

between the parties for the decision of a Civil Court, but subject thereto his order is final.¹

Acquisition of
land for
building and
other purposes.

"Section 84. A Civil Court may, on the application of the landlord of the holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational, or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,² authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant."

No appeal lies from an order under this section.³

This section has been declared to be in force in the Santhal Parganas.⁴

Common
Manager.

As to the power of the District Judge to appoint a common manager in case of a dispute between co-owners of an estate or tenure as to the management thereof, see sections 98 to 100.

There is no appeal from an order rejecting an application for the appointment of a common manager.⁵

Jurisdiction of
Civil Court in
matters
relating to
rent.

Any person aggrieved by an entry of a rent settled in a rent settlement rent roll prepared under the Act, or by the omission to settle a rent for such entry may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of land to which this entry relates or in respect of which an omission was made.⁶

As to the grounds upon which such suit may be brought, see section 104H of the Act, as inserted by Bengal Act III of 1898.⁷

As to easements in Eastern Bengal and Assam, see Eastern Bengal Assam Act I of 1908, s. 24.

As to the settlement of rents by a Revenue officer in cases where a

¹ Act VIII of 1885, s. 70.

² A majority of the Court held in *Goghun Mollah v. Rameshur Narain Mahta* (1891), 18 Cal., 271, that the Collector's certificate is not conclusive.

³ *Goghun Mollah v. Rameshur Narain Mahta* (1891), 18 Cal., 271; *Peari Mohun Mukherji v. Baroda*

Churn Chuckerbutty (1892), 19 Cal., 485.

⁴ Reg. III of 1872, s. 8, as amended by Reg. III of 1899, s. 3.

⁵ *Hossain Buz v. Mutookāharee Lal* (1887), 14 Cal., 812.

⁶ Act VIII of 1885, s. 104H.

⁷ *Prafulla Nath Tagore v. Secretary of State* (1921), 26 C. W. N., 100.

settlement of land revenue is not about to be made, see sections 105 to 108 of the Act.

There is no second appeal to the High Court from a decision of a Revenue Officer settling rents under section 104 of the Act.¹

“Section 106.² In proceedings under the part of the Tenancy Act which relates to the settlement of rents and decision of disputes in cases where a settlement of land revenue is not being or is not about to be made, a suit can be instituted before a Revenue Officer at any time within three months from the date of the certificate of the final publication of the record of rights for the decision of any dispute regarding any entry which a Revenue Officer has made in, or any omission which such officer has made from the record, whether such dispute be between landlord and tenant or between landlords of the same or of neighbouring estates,³ or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent free is properly so held, or as to any other matter, and the Revenue Officer shall hear and decide the dispute.”

Institution of suit before a Revenue Officer.

This section does not oust the jurisdiction of the Civil Courts.⁴

It does not include a suit for possession,⁵ nor can the Revenue Officer determine a question of title.⁶

As to a suit for a declaration that land is held rent-free or is held at fixed rents, see *Sashi Bhushan Hazra v. Eshabar Ali (Sheikh)* (1915), 19 C. W. N., 636.

As to the finality of the Revenue Officer's decision, see section 107.⁷

“Section 109.⁸ Subject to the provisions of section 109A Bar of a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of any application made, suit instituted, or proceedings taken under sections 105 to 108 (settlement of rent and

Bar of jurisdiction of Civil Courts.

¹ *Achha Mian Chowdhury v. Durga Churn Law* (1897), 25 Cal., 146; 2 C. W. N., 137.

² As amended by Ben. Act I of 1903; E. B. and A. Act I of 1908, s. 27.

³ As between landlords of neighbouring estates the only question which can be raised in such proceeding is as to the possession at the date of the final publication of the record: *Kali Sundari Debya v. Girija Sankar Sanyal* (1911), 15 C. W. N., 974.

⁴ *Sashi Bhushan Hazra v. Eshabar*

Ali (Sheikh), 19 C. W. N., 636.

⁵ *Kali Sundari Debya v. Girija Sankar Sanyal* (1911), 15 C. W. N., 974; *Nilmani Kumar v. Kedar Nath Ghosh* (1913), 17 C. W. N., 750.

⁶ *Ram Chandra Bhanja v. Nandanandananda Gossein* (1913), 18 C. W. N., 988.

⁷ *Parbati v. Toolshikapri* (1918), 18 C. W. N., 604.

⁸ As amended for Western Bengal by Ben. Act I of 1907, s. 31, and for Eastern Bengal by E. B. and A. Act I of 1908, s. 31.

decision of disputes where a settlement of land revenue is not being or is not about to be made).¹

Appeals from
decisions of
Revenue
Officers.

"Section 109A.²—(1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under sections 105 to 108 (both inclusive).³

"(2) An appeal shall lie to the Special Judge from the decisions of a Revenue Officer under sections 105 to 108A (both inclusive).

"(3) Subject to the provisions of chapter xlii of the Code of Civil Procedure (dealing with second appeals),⁴ an appeal lies to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent),⁵ as if he were a Court subordinate to the High Court.⁶

"Provided that if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenants or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108."

As to appeals from orders, see *Mathura Nath Roy Chaudhuri v. Basanta Kumar Chakravarti* (1908), 86 Calc., 510.

This right of appeal to the High Court is limited by the provisions as to second appeal contained in section 100⁷ of the Code of Civil Procedure, 1908.⁸

An appeal lies from an order refusing to rehear an appeal dismissed

¹ This does not apply when the suit is withdrawn with liberty to bring a fresh suit: *Soroj Kumar Acharji v. Umed Ali Howladar* (1921), 25 C. W. N., 1022. It applies to a proceeding under s. 106 (*ante*, p. 563) of the Act: *Jatindra Nath Chowdhury v. Asieur Rahaman* (1922), 50 Calc., 79.

² As amended by Ben. Act III of 1898.

³ This has no application to a tenancy not governed by the Bengal Tenancy Act: *Ramdas Mukerjee v. Bipradas Pal Chowdhury* (1913), 19 C. W. N., 35.

⁴ *Ante*, pp. 342-345.

⁵ See *Lala Kirat Narain v. Palukdhari Pandey* (1889), 17 Calc., 326;

Midnapur Zamindary Company v. Sridharmahata (1922), 49 Calc., 866, following *Jnanada Sundari Chowdhurani v. Amudi Sarkar* (1916), 43 Calc., 603.

⁶ See *Akbar Ali Khan v. Abbas (Syed)* (1915), 19 C. W. N., 1328; *Pirthichand Lal Chowdhury v. Basarat Ali* (1909), 37 Calc., 30; 13 C. W. N., 1149; *Bisheshur Ray v. Rajendra Kumar* (1914), 18 C. W. N., 949; *Lukhi Narain Serouji v. Ram Chandra Bhuiya* (1911), 15 C. W. N., 921.

⁷ *Ante*, p. 342.

⁸ Act V of 1908. *Nafar Chandra Pal v. Shukur* (1918), 45 I. A., 183; 46 Calc., 139; 28 C. W. N., 345.

for default.¹ It does not lie from an order of remand passed by a Special Judge.²

As to the stay of proceedings in a Civil Court during the preparation of a record of rights, see section 111, as amended by Bengal Act I of 1907, s. 34, and Eastern Bengal and Assam Act I of 1908, s. 34.³ Record of right.

"Section 111A. No suit can be brought in any Civil Court in respect of any order directing the preparation of a record of rights under chapter x of the Bengal Tenancy Act, 1885 (dealing with record of rights and settlement of rents), or in respect of the framing, publication, signing or attestation of such a record, or save as provided in section 104H (*ante*, p. 562), for the alteration of any entry in such a record of a rent settled under sections 104A to 104F. Jurisdiction of Civil Court.

"Provided that any person who is dissatisfied with any entry in, or omission from, a record of rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under chapter vi of the Specific Relief Act, 1877."

As to revision of a record of rights by the Board of Revenue in Assam Assam, see Eastern Bengal and Assam Act I of 1908, s. 36.

"Section 144.—(1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure,⁴ be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought." Jurisdiction in proceedings under Act.

This does not determine in which Court the suit is to be instituted⁵ or the nature of the suit. It determines the local jurisdiction within which suits are to be instituted.⁶ The suit must be instituted in the Court of the lowest grade competent to try it.⁷

"(2) When under this Act a Civil Court is authorised to

¹ *Manmatha Nath Dey v. Gadar Mana* (1917), 45 Cal., 698.

² *Mothur Chandra Majumdar v. Tara Sunkar Ghose* (1903), 7 C. W. N., 440.

³ See *Troylokhyanath Bose v. Macleod* (1899), 28 Cal., 28.

⁴ Act V of 1908.

⁵ *Fazlur Rahim v. Dwarka Nath Chowdhry* (1908), 30 Cal., 458; 7 C. W. N., 402.

⁶ *Rango Roy v. Holloway* (1899), 4 C. W. N., 95.

⁷ *Ante*, p. 315. *Fazlur Rahim v. Dwarka Nath Chowdhry* (1908), 30 Cal., 458; 7 C. W. N., 402.

make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought."

Appeals in
rent-suits.

"Section 158. An appeal shall not lie from any decree or order¹ passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent² where:

- (a) the decree or order¹ is passed by a District Judge, Additional Judge, or Subordinate Judge, and the amount claimed³ in the suit does not exceed one hundred rupees,⁴ or
- (b) the decree or order¹ is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed³ in the suit does not exceed fifty rupees;

unless in either case the decree or order¹ has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto,⁵ or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent² annually payable by a tenant:⁶

"Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid⁷ has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested

¹ This includes an interlocutory order such as an order of remand: *Gaganchand Sardar v. Caspersz* (1897), 4 C. W. N., 44.

² This includes a suit for rent by a co-sharer landlord: *Jogendra Nath Ghose v. Paban Chandra Ghose* (1908), 7 C. W. N., 908. As to cesses, see *Rajani Kant Nag v. Jageshwar Singh* (1892), 20 Calc., 254; *Watson v. Sreekrishna Bhummick* (1898), 21 Calc., 132; Ben. Act IX of 1890, s. 47.

³ *Behary Churn Sen v. Bhut Nath Pramanik* (1898), 3 C. W. N., 214.

⁴ *Chamed Sheikh v. Naba Gopal Ghosh* (1914), 19 C. W. N., 359; *Kali Krishna Biswas v. Ram Chandra*

Baidya (1915), 19 C. W. N., 823.

⁵ *Gauhar Ali v. Samiruddin Sheikh* (1913), 18 C. W. N., 33.

⁶ See *Narain Mahlon v. Manofi Pattuk* (1890), 17 Calc., 489; *Aubhoy Churn Maji v. Shoshi Bhusan Bose* (1888), 16 Calc., 155. An order setting aside or declining to set aside a sale in execution of a decree for rent, the decree holder being the purchaser, is appealable: *Kali Mandal v. Ramsarbaswa Chakravarti* (1905), 32 Calc., 957; 9 C. W. N., 721.

⁷ This refers to the judicial officer spoken of in clause (b): *Sankarmani Debya v. Mathura Dhupini* (1888), 15 Calc., 827.

in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity,¹ and may pass such order as the District Judge thinks fit.

“*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.”²

No appeal lies from :

(a) a decision of a Special Judge under section 104, cl. 2, of the Act I ;³

(b) an application made under section 93 of the Act ;⁴

(c) an order setting aside a sale under section 178 of the Act ;⁵

(d) an order under section 174 of the Act.⁶

No appeal lies from an order which is not a decree,⁷ e.g. :

(a) a measurement under section 90 of the Act ;⁸

(b) an order setting aside a sale under section 178⁹ or section 174¹⁰ of the Act.

Where no appeal lies to the Subordinate Judge it follows that there is no second appeal from his decision.¹¹

As to the power of a Court to determine the incidents of a tenancy, see section 158 of the Act ; *Janki Ray v. Kalanand Singh Raja* (1922), 2 Pat., 192.

“Section 189A.—(1)¹² It shall be competent to the Board Transfer.

¹ This does not include a mere question of law : *Hornamanda Banerjee v. Ananta Dasi* (1904), 9 C. W. N., 492. Cf. *ante*, pp. 365, 366. This power can be assigned to an Additional District Judge : *Lal Behari Basak v. Akhil Chandra Santra* (1922), 27 C. W. N., 315.

² Ben. Act I of 1907, s. 46 ; F. B. and A. Act I of 1908. See *Nabin Chandra Choudhury v. Bepin Chandra Choudhury* (1915), 19 C. W. N., 953.

³ *Lala Kirat Narain v. Palukdhari Pandey* (1889), 17 Calc., 326.

⁴ *Hossain Bux v. Mutookdharee Lal* (1887), 14 Calc., 312.

⁵ *Harabandhu Adhikari v. Harish Chandra Dey Pal* (1898), 3 C. W. N., 184 ; *Roghun Singh v. Misri Singh* (1894), 21 Calc., 825.

⁶ *Kishori Mohun Roy v. Suroda-*

mani Dasi (1890), 1 C. W. N., 80 ; *Subh Narain Lal v. Goroke Prosad* (1898), 3 C. W. N., 344.

⁷ *Dya Grazi v. Ram Lal Sukul* (1897), 2 C. W. N., 351. Cf. *ante*, p. 335.

⁸ *Ibid.*

⁹ *Roghun Singh v. Misri Singh* (1894), 21 Calc., 825 ; *Harabandhu Adhikari v. Harish Chandra Dey Pal* (1898), 3 C. W. N., 184.

¹⁰ *Subh Narain Lal v. Goroke Prosad* (1898), 3 C. W. N., 344 ; *Kishori Mohun Roy v. Surodamani Dasi* (1890), 1 C. W. N., 80.

¹¹ *Bhagabati Bewa v. Nanda Kumar Chuckerbutty* (1908), 12 C. W. N., 835.

¹² Added by B. & O. Act IX of 1920, s. 2.

of Revenue to transfer, and with the previous sanction of the Local Government to make rules authorising Revenue Officers to transfer any suit or other proceeding, original or otherwise, under any provision of this Act, from the file of any subordinate officer to the file of any other subordinate officer who is duly authorised to entertain or decide suits or other proceedings under such provisions."

Transfers. As to the validation of certain transfers made prior to the commencement of the Bihar Tenancy (Amending and Validating) Act, 1920, see section 2 of that Act (B. & O. Act IX of 1920).

Rights of pasturage, etc. "Section 198. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, so far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest rights, rights over fisheries and the like."

A suit for the rent of a fishery is entertainable in ordinary Civil Courts, which have jurisdiction in rent suits.¹

Water-rates. By the Bengal Irrigation Act, 1876,² all suits arising out of the exercise of the power of distraint for recovery of water-rates, or out of acts done under colour of the exercise of the said power of distraint or by persons in receipt of the water-rates against any agents employed by them in the collection of such water-rates, or the sureties of such agents for money received or for accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the same Court or authority as would have jurisdiction if such water-rates were rent due for the land irrigated.

Patni Sales (Bengal).

Patni sales. By Section 6 of the Bengal Patni Taluqs Regulation, 1819,³ "if the security tendered by any purchaser or transferee should not be approved by the Zamindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue

¹ *Shib Prosad Chaudhuri v. Vakai Pali* (1906), 33 Cal., 601.

² Ben. Act III of 1876, s. 90.
³ Ben. Reg. VIII of 1819.

an injunction on the Zamindar to accept it, and give effect to the transfer without delay."

There is no appeal from such order.¹

Rent Restriction.

Having regard to the conditions in consequence of the recent war, temporary provisions which placed restrictions on the increase of rent were made by the Calcutta Rent Act, 1920,² the Bombay Rent (War Restriction) Act, 1918,³ and the Rangoon Rent Act, 1920.⁴ Rent restriction.

As to the duty of the President of the Improvement Tribunal to revise the order of the Rent Controller, see *Damonia v. Jaston* (1922), 27 C. W. N., 287.

The High Court can revise an order of the Rent Controller.⁵

Bombay Presidency.

In the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right of possession of land is claimed, must be brought in the Civil Courts and not in the Revenue Courts.⁶ Suit to be brought in Civil and not in Revenue Court.

As to the concurrent jurisdiction of the Civil and Revenue Courts in suits for possession, see *Ex parte Nagova* (1866), 3 Bom. H. C. A. C., 108.

Central Provinces.

The law of landlord and tenant in the Central Provinces is to be found in the Central Provinces Tenancy Act, 1920.⁷ Central Provinces Tenancy Act, 1920.

By that Act a Revenue Officer may determine applications to set aside transfers of occupancy rights.⁸ He has also power in certain cases to enhance the rent payable by an occupancy tenant.⁹ Powers of Revenue Officer.

An order for the ejectment of an occupancy tenant in

¹ *In the matter of Soorja Kant Acharj Chowdry* (1876), 1 Calc., 383.

² Ben. Act III of 1920.

³ Bom. Act VII of 1918.

⁴ Bur. Act II of 1920.

⁵ *Allen v. Bando* (1922), 49 Calc., 981; *Chatterjee v. Tribedi* (1921), 26 C. W. N., 78; *Basanti Charan Sinha v. Rajani Mohan Chatterjee* (1922),

49 Calc., 928.

⁶ Act XVI of 1888, s. 1. This Act is in force in the whole of the Bombay Presidency except as regards the Scheduled Districts: Act XV of 1874, s. 5.

⁷ C. P. Act I of 1920.

⁸ Ss. 12 to 14.

⁹ S. 16.

execution of a decree for arrears shall be transferred to a Revenue Court for execution.¹

As to the power of a Court to refer a case to a Revenue Officer to fix a fair and equitable rent for a holding, see section 26.

Disputes as to
right to make
improvement.

Any dispute arising between a tenant and his landlord :

(a) as to the right to make an improvement; or

(b) as to whether a particular work is an improvement, shall be decided by a Revenue Officer.²

Remission or
suspension of
rent.

“Section 65.—(2) No Civil Court shall entertain or try any suit to recover any rent the payment of which has been remitted or suspended by the Revenue Officer, and any such suit pending at the date of the order of remission or suspension shall be dismissed, and no orders regarding costs shall be made.”

Appeals.

“Section 88. A decree passed in a suit for arrears, whether on appeal or otherwise, by a Judge of a Civil Court exercising powers not less than those of a Subordinate Judge as defined in the Central Provinces Courts Act, 1917,³ shall not be subject to appeal unless :

(a) the amount or value of the subject-matter of the suit exceeds one hundred rupees ; or

(b) a question relating to a title to land or some interest in land having been determined as between parties having conflicting claims thereto.

“*Explanation.*—For the purposes of this section a right to hold land rent free or on favourable terms shall be deemed to be an interest in land.”

As to the partition of holdings by Revenue Officers, see sections 93 and 94.

Jurisdiction of
Civil Courts
barred in
certain cases.

“Section 105. Except as provided in this Act no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Chief Commissioner, Financial Commissioner, a Revenue or a Settlement Officer is, by this Act, empowered to determine, decide, or dispose of ; and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :

¹ S. 24.

² C. P. Act I of 1917.

³ S. 54.

- (a) any matter provided for in section 6 as to the enforcement by the landlord of his right to purchase the right of an absolute occupancy tenant,¹ or the reinstatement or retention in possession of such tenant ;
- (b) the fixation, alteration, commutation, enhancement, reduction, remission, suspension, or apportionment of rent under sections 8, 15, 16, 48, 51, 56, 57, 62, 63, 64, 65, 66, 87, 93, or 94 ;
- (c) claims to set aside transfers by occupancy tenants under section 13 ;
- (d) disputes relating to improvements and the determination of amount of compensation payable therefore under sections 30, 31, or 54 ;
- (e) the reinstatement in possession of a tenant whose holding is treated as abandoned under section 36 ;
- (f) the declaration of sub-tenants as having the rights of occupancy tenants under section 40 or 41 ;
- (g) the declaration of land to be a village-service holding under section 42 ;
- (h) the ejectment of a village-servant from a village-service holding, and the placing of the successor in office of such servant in possession of the holding under section 45 and section 46 ;
- (i) the declaration of a village-servant to be an occupancy tenant of a village-service holding under section 48 ;
- (j) the granting of sanction to transfer cultivating rights in sir-land or to create tenancy rights therein for a period exceeding five years under section 49 ;
- (k) the imposition of penalties on landlords and the award of compensation to tenants under sections 65, 74, 77 or 88 ;
- (l) claims by tenants to hold land at a rent lower than the assessed rent under section 67 ;
- (m) applications by tenants for permission to deposit rents and the disposal of such deposits by Revenue Officers under sections 68, 69, 70, 71, or 72 ;
- (n) claims to be declared tenants of waste land under section 87 ;
- (o) the partition of holdings under section 93 ;

¹ For definition, see s. 4.

- (p) the partition of a holding which consists partly of sir-land under section 94;
- (q) claims to acquire holdings or to be reinstated in holdings under section 98;
- (r) any matter provided for in section 99 as to any land held or claimed to be held rent free or at a reduced rent; and
- (s) any claim to compel the performance of any duty imposed by this Act on the Chief Commissioner, Revenue Officer, or Settlement Officer.

Jurisdiction of Civil Courts in suits between landlords and tenants.

"Section 106. Except as provided in section 105 the Civil Courts shall have jurisdiction in all suits between landlords and tenants as such: Provided that a Judge of a Civil Court of original jurisdiction shall not, unless he is also a Revenue Officer, hear any suit for an arrear, other than an arrear due by a sub-tenant."

Chota Nagpur.

Chota Nagpur Tenancy Act.

The law on this subject is now to be found in the Chota Nagpur Tenancy Act, 1908,¹ as amended by the Chota Nagpur Tenancy (Amendment) Acts, 1920.²

Powers of Deputy Commissioner.

As to the methods by which the rent of an occupancy raiyat may be enhanced by the Deputy Commissioner, see sections 27³ to 30 as so amended.⁴

As to the power of the Deputy Commissioner to increase the rent in respect of excess areas, see sections 31 to 33.

As to the power of the Deputy Commissioner to reduce the rent payable by an occupancy tenant, see sections 34 to 36, as amended.⁵

As to the power of the Deputy Commissioner to determine the rent of a non-occupancy raiyat, see sections 37 to 42.

As to the power of the Deputy Commissioner to authorise the acquisition of a holding by the landlord for certain purposes, see sections 50, 52.

Receipts.

As to the power of the Deputy Commissioner to fine a landlord for not granting a receipt for rent or preparing or retaining a counterfeit, see section 54.

Commutation of rent payable in kind.

As to the power of the Deputy Commissioner or Revenue Officer⁶ to commute rent payable in kind, see sections 61 to 63, as amended by the Chota Nagpur Tenancy Amendment Act, 1920.⁷

¹ Ben. Act VI of 1908.

² B. & O. Acts VI and VII of 1920.

³ As to revision, see *Kartik Chandra Ojha v. Gora Chand Mahto* (1918), 40 Cal., 518.

⁴ B. & O. Act VI of 1920, s. 11.

⁵ *Ibid.* s. 12.

⁶ S. 3, XXV.

⁷ B. & O. Act VI of 1920, s. 20.

By section 87 (1) in proceedings with regard to the record of rights and settlement of rents a suit may be instituted before a Revenue Officer¹ for the decision of any dispute regarding any entry which a Revenue Officer¹ has made in, or any omission which he has made from, the record except² an entry of a fair rent settled under the provisions of section 85 before the final publication of the record of rights, whether such dispute be:

Institution of suits before Revenue Officer.

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or
- (d) as to whether the relation of landlord and tenant exists, or
- (e) as to whether land held rent free is properly so held, or
- (f) as to any other matter;³

and the Revenue Officer may hear and decide the dispute:

"Provided that the Revenue Officer may, subject to such rules as may be made in this behalf under section 264, transfer any particular case or class of cases to a competent Civil Court for trial.

"(2) An appeal shall lie in the prescribed manner and to the prescribed officer, from decisions passed under sub-section (1)."

There is no second appeal to the High Court.⁴

By section 89 revisional powers are given to Revenue Officers specially empowered by the Local Government in this behalf and an appeal lies in the prescribed manner and to the prescribed officer from such order on revision.

As to revision by the High Court, see *ante*, p. 857.

By section 92 "no suit shall be brought in any Court in respect of any order directing the preparation of a record of rights under chapter xlii of the Act, or in respect of the

Restriction on suits.

¹ S. 8, XXV.

² B. & O. Act VI of 1920, s. 27.

³ *E.g.* whether a jalgirdari tenure is hereditary or for life: *Raghubur Sahi (Raja) v. Pratapudoy Nath Sahi Deo (Maharaja Sri)* (1911), 16 C. W. N., 294.

⁴ *Jagdishwar Dayal Singh (Thakur) v. Bhagdi Mahton*, [1920, Pat.], 802; *Raghubur Sahi (Raja) v. Pratap Uday Nath Sahi Deo (Maharaja Sri)* (1911), 16 C. W. N., 294; *Faujdar Sahu v. Nema Bhogta*, [1922, Pat.], 109.

framing, publication, signing or attestation of such a record or of any part of it."

As to the bar of suits in other cases, see section 258, *post*, pp. 580, 581.

As to a suit before a Revenue Officer for the decision of any dispute regarding any entry in the record relating to pradial conditions or regarding any omission to enter any such condition in the record and as to an appeal from his decision to a prescribed officer, see section 111.

As to an appeal from the decision of Revenue Officers with regard to the record of privileged lands, see section 126.

As to a suit to decide disputes as to the rights and obligations of raiyats having khunt-katti rights, village headmen and other classes of tenants, see section 180.

Office for
instituting
suits and
making
applications.

"Section 136. Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made :

- (a) in the Revenue Office of the district ; or
- (b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is empowered to receive such suits or applications then in the office of such Deputy Collector ; or
- (c) in the office of the Revenue Officer having jurisdiction to entertain the same.

Transfer of
suits.

"Section 137. The Deputy Commissioner may withdraw any suit, application, or proceeding¹ from any Deputy Collector or Revenue Officer who is exercising powers of the Deputy Commissioner under the Act, and may try it himself or transfer it to any Deputy Collector.

Jurisdiction
when land
situate in more
than one
district or
sub-division.

"Section 138.—(1) When any suit is instituted or application made in respect of any land comprised in a tenure or holding and such land is situated in more than one district or sub-division, the district or sub-division in which the greater part of such land is situated shall be deemed to be the district or sub-division in which the cause of action has arisen ;

"And, if any question be raised respecting the district or sub-division in which the greatest part of the land is situated, the Board of Revenue or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

"(2) Except as provided in sub-section (1) no Deputy Commissioner can exercise any jurisdiction under that Act in respect of any land situated beyond the local limits of his

¹ B. & O. Act VI of 1920, s. 37.

jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

"Section 189.¹ The following suits and applications shall be cognizable only by the Deputy Commissioner, and must be instituted by and tried and heard under the provisions of this Act, namely :

Certain suits and applications cognizable only by Deputy Commissioner.

- (1) all suits for the delivery of leases or counterpart engagements ;
- (2) (a) all suits and applications for the determination of the rent payable by a tenant for—
 - (b) all suits and applications not otherwise provided for in this Act for the assessment of rent payable by a tenant for—
 - (c) all suits for arrears of rent on account of—
agricultural land, whether subject to the payment of rent or only to the payment of dues recoverable as if they were rent ;
- (3) (a) all applications to determine the existence, non-existence, nature or extent of—
 - (b) all applications for determination of the sum payable by any person in respect of—
 - (c) all applications for the assessment of the sum fairly payable by an person in respect of—
 - (d) all applications for damage in respect of exceeding, or in respect of interference with the enjoyment of—
 - (e) all suits for arrears of anything payable in respect of—
rights of pasturage, rights to take forest produce, rights of fishery or other similar rights ;
- (4) all suits and applications to eject any tenant of agricultural land or to cancel any lease of agricultural land ;
- (4A) all suits for the ejectment of a trespasser where the plaintiff claims as alternative relief that the defendant be declared liable to pay for the land in his possession a fair rent ;
- (5) all suits and applications to recover the occupancy or possession of any land from which a tenant has been

¹ As amended by B. & O. Act VI of 1920, s. 86.

unlawfully ejected by the landlord or any person claiming under or through the landlord.

- (6) subject to the provisions of sub-section 5 of section 74A¹, all suits by or against a village headman for a declaration of title in, possession of, ejectment from, or recovery of, his office or land comprised in his village-headman's tenancy, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant, and whether brought or not by or against the landlord of such land;
- (7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession;
- (8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner."

As to suits by co-sharer landlord for rent, see section 142 of the Act.

Exclusive jurisdiction of Deputy Commissioner.

"Section 139A.² Subject to the provisions of chapter xii, no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final."

Claim by third party to interest in property seized.

Section 206 provides a procedure where a third party claims an interest in property seized in execution, and permits the party against whom an order is passed by the Deputy Commissioner to bring a suit in a Civil Court to establish his right:

Provided that if the property has been sold, the suit shall not be for the recovery of the property, but for damages against the judgment-creditor by whom the property was brought to sale.

Claim by third party to be in possession of tenure or holding.

Section 211 provides a procedure where a third party claims to be in lawful possession of a tenure or holding which

¹ As to the determination of a person to be village headman when the tenancy is vacant.

² Inserted by section 89 of B. & O. Act VI of 1920.

is about to be sold in execution of a decree for rent, and permits the party against whom judgment is given by the Deputy Commissioner to bring a suit in the Civil Court to establish his right.¹

"Section 214.² No suit or application shall be entered by any Court to set aside or to modify the effect of—

Bar of suits, etc.

(a) any sale made under this chapter, save under section 211, section 212, or section 213 or on the ground of fraud or want of jurisdiction, or

(b) an order under section 212, sub-section (2), or section 213, sub-section (2), setting aside a sale.

"*Explanation.*—Where property has been sold under the provisions of sub-section (3)(b) of section 210, this section does not prohibit an application under rule 72 (3) or rule 91, nor a suit under rule 63 or rule 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, if such suit be instituted within one year of the date of the adverse order.

"Section 215.—(1) All orders passed by a Deputy Commissioner under the provisions of the foregoing provisions of this Act, not being:

Appeals from orders of Deputy Commissioners.

(a) judgments in suits, or

(b) orders passed in the course of suits and relating to the trial thereof, or

(c) orders passed after decree and relating to the execution thereof,³ or

(d) orders passed under sections 206⁴ or 211⁵

are appealable :

(i) to the Commissioner, or

(ii) if passed by a Deputy Collector exercising powers of a Deputy Commissioner—to the Deputy Commissioner.

"(2) No judgment of a Deputy Commissioner in any suit and no order of a Deputy Commissioner passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, are open to revision or appeal otherwise than as expressly provided in the Act.

"(3) Orders passed after decree and relating to the execu-

¹ As to revision of an order under this section, see *Ganesh Narayan Sahi Deo (Tikait) v. Chandu Mistri* (1920), 5 Pat. L. J., 468. See sub-section (1A) added to this section by B. & O. Act VI of 1920, s. 51.

² As amended by section 55 of B. & O. Act VI of 1920.

³ *Lal Nilmani Nath Sahi Deo v. Baldeo Das* (1920), 5 Pat. L. J., 101.

⁴ *Ante*, p. 576.

⁵ *Ante*, pp. 576, 577.

tion thereof, (1) except orders passed under section 206¹ or under section 211,² or under section 212, sub-section (2),³ setting aside a sale or under rule 60, rule 61, or rule 62 of Order XXI of the First Schedule of the Code of Civil Procedure, 1908,⁴ and orders passed under section 213A⁵ are appealable to the Court to which an appeal from the decree itself would lie."

Bar to further
appeals.
Revision.

"Section 217. Orders passed by the Commissioner or Deputy Commissioner in such appeals shall not be open to any further appeal, but the Board or (in the case of appeals decided by the Deputy Commissioner) the Commissioner may call for any case and pass such orders thereon as it or he may think proper."⁶

Appeal in
certain cases.

"Section 218.—(1) In suits referred to in clause (2) (c)⁷ or clause (7) of section 139, tried and decided by a Deputy Commissioner, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final, and not open to revision or appeal except as provided in sub-section (2), unless in any such suit a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment is open to appeal in the manner provided in section 224 (below).

"(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner."⁸

Appeal to
Judicial
Commissioner
or High Court.

"Section 224.—(1) In all suits before a Deputy Commissioner under the Act, except—

(a) suits in which when tried and decided by a Deputy Commissioner the judgment is declared by this Act⁹ to be final, and

¹ *Ante*, p. 576.

² *Ante*, pp. 576, 577.

³ *Bisewar Sahu v. Zainul Rah-*
man, [1921 Pat.], 195.

⁴ As amended by section 56 of
B. & O. Act VI of 1920.

⁵ *Ibid.*

⁶ The High Court has no power of
revision except in the matter of
suits: *Gopal Rai v. Hitnarayan Singh*

(1917), 8 Pat. L. J., 145.

⁷ As amended by section 57 of B.
& O. Act VI of 1920.

⁸ *Durga Prasad Nath v. Ganpat*
Dholi, [1917 Pat.], 188; *Lachmina-*
rain Agarwala v. Thakurhari Dutta
(1919), 4 Pat. L. J., 163.

⁹ Section 58 of B. & O. Act VI of
1920.

(b) suits in which when tried and decided by a Deputy Collector an appeal is allowed by this Act¹ to the Deputy Commissioner,

an appeal from the judgment of the Deputy Commissioner shall lie to the Judicial Commissioner unless the amount or value in dispute exceeds five thousand rupees,² in which case the appeal lies to the High Court.

“(2)³ Save where otherwise expressly provided in this Act or by any other law for the time being in force, a second appeal shall lie to the High Court from any appellate decree passed by the Judicial Commissioner under this chapter or from any order passed by him on appeal under section 215, sub-section (3), or any of the following grounds, namely :

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or of usage having the force of law ;
- (c) a substantial error or defect in the procedure provided by the Act which may possibly have produced error or defect in the decision of the case upon the merits ;

and the provisions of Part VII⁴ and of Order XLI⁵ of the First Schedule to the Code of Civil Procedure, 1908, shall apply, so far as may be, to such appeals.

“Section 225.—(1) Where in analogous suits some appeals have been presented to the Deputy Commissioner and others to the Judicial Commissioner, the Judicial Commissioner may, on the application of any of the parties, transfer to his own Court the appeals pending in the Court of the Deputy Commissioner.

Hearing of
appeals by
Judicial
Commissioner
instead of by
Deputy Com-
missioner.

“(2) Where in analogous suits some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, a plaintiff or defendant whose appeals would ordinarily lie to the Deputy Commissioner may, if an appeal in any such suit

¹ Section 58 of B. & O. Act VI of 1920.

² In case of collective suits under section 140 the collective amount determines the forum of appeals: *Chaudhuri Shyam Narain Singh v. Siuacharan Sahu*, [1921 Pat.], 345;

³ Pat., 32.

⁴ As substituted by B. & O. Act VI of 1920, s. 58 (2). As to decisions under s. 87, see *ante*, p. 578.

⁵ *Ante*, pp. 334-352.

⁶ *Ante*, p. 352.

has been presented by any other plaintiff or defendant to the Judicial Commissioner and admitted, present his appeal to the Judicial Commissioner instead of to the Deputy Commissioner, and the Judicial Commissioner may hear and decide the same." ¹

Second appeal If any of the cases are above Rs.100 an appeal lies in all of them to the High Court.²

As to revision by the High Court, see *ante*, pp. 354-378.

Judgment by default.

By section 228 in all cases in which the Deputy Commissioner sets aside a judgment or order passed by default his order his final, but in all appealable cases in which he rejects an application to set it aside an appeal lies to the tribunal to which the final decision in the suit would be appealable.³

As to special provisions with respect to mundari khunt-kattidars,⁴ see chapter xviii of the Act.

Certificate procedure.

As to the summary procedure for the recovery of rents under the Bihar and Orissa Public Demands Recovery Act, 1914,⁵ see chapter xvii added to the Chota Nagpur Tenancy Act, 1908,⁶ by section 60 of the Chota Nagpur Tenancy Amendment Act, 1920.⁷

Bar to suits and finality of decisions.

"Section 258.⁸ Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify, or set aside, either directly or indirectly, any decision, order, or decree of any Deputy Commissioner or Revenue Officer ⁹ in any suit, application, or proceeding under section 29,¹⁰ section 32,¹¹ section 35,¹² section 42,¹³ section 46, sub-section (4), section 49, section 50,¹⁴ section 54,¹⁵ section 61,¹⁶ section 63,¹⁷ section 65, section 73, section 74A, section 85, section 86, section 87,¹⁸

¹ *Sadanand Tewari v. Debnath Manjhi*, [1922 Pat.], 154; s.c. [1917 Pat.], 287.

² *Ibid.* [1917 Pat.], 287.

³ As to default by a minor sued as a major, see *Chaudhuri Shyam Narain Singh v. Siucharan Sahu*, [1921 Pat.], 345; 1 Pat., 32.

⁴ For definition, see s. 8.

⁵ B. & O. Act IV of 1914.

⁶ B. & O. Act V of 1908.

⁷ B. & O. Act VI of 1920.

⁸ As amended by B. & O. Act VI of 1920, s. 66.

⁹ This includes the Judicial Commissioner: *Ganesh Narain Sahi Deo v. Protap Udai Nath Sahi Deo* (1915), 43 Cal., 186; 19 C. W. N., 998.

¹⁰ *Ante*, p. 572.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ante*, p. 573

section 89,¹ section 91,² or under chapters xiii,³ xiv,⁴ xv,⁵ xvi,⁶ or xviii,⁷ except on the ground of fraud or want of jurisdiction, and every such decision, order, or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and subject to the provisions of this Act relating to appeal shall be final."

Section 264 (viii) of the Act gives to the Government power to prescribe the officer to hear appeals, and the Judicial Commissioner is the prescribed officer under the rules. The provisions for appeal appear to have been overlooked in section 258, and it must therefore be understood that the special Appellate Court in Revenue cases, in deciding a dispute under the Act, performs the functions of a Revenue Officer.⁸

No suit lies to vary or set aside any order or decision made under the provisions of the Chota Nagpur Tenures Act, 1869 (Bengal Act II of 1869),⁹ which was an Act passed for the purpose of ascertaining, regulating, and recording certain tenures in Chota Nagpur.

Madras.

The law on this subject in force in the Presidency of Madras is to be found in the Madras Estates Land Act, 1908,¹⁰ as amended by the Madras Estates Land Act Amendment Act, 1909.¹¹

These Acts extend to the whole of the Presidency of Madras except the Presidency Town, the district of Malabar, and the portion of the Nilgiri district known as the South-East Wynaad.

These Acts contain the following (amongst other) provisions :

Nothing in section 71 (payment or refund of deposit for

Deposit of rent.

¹ *Ante*, p. 573.

² Stay of proceedings.

³ Prædial conditions.

⁴ Privileged lands.

⁵ Khunt-katti rights.

⁶ Judicial procedure.

⁷ *Ante*, p. 580.

⁸ *Ganesh Narain Sahi Deo v. Protop Udai Nath Sahi Deo* (1915), 43 Calc., 186; 19 C. W. N., 998.

⁹ Ben. Act II of 1869, s. 20.

¹⁰ Mad. Act I of 1908. For definition of "estate" see s. 3 (2) of the Act: *Upadrashta Venkata Sastrulu v. Seetharamudu (Divi)* (1919), 46 I. A., 123; 43 Mad., 166; 21 Bom. L. R., 925; *Zamindar of Sanivarpupet v. Zamindar of South Vallur* (1918), 46 I. A., 38; 42 Mad., 355; 23 C. W. N., 673; 21 Bom. L. R., 623.

¹¹ Mad. Act IV of 1909.

rent) prevents any person entitled to receive the amount of any such deposit from recovering the same by suit in a Civil Court from a person to whom it has been paid under this section.

Barring of suits.

By section 72 no suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government, in respect of anything done by a Collector or other officer regarding a deposit of rent under sections 68 to 71.

Civil Courts have jurisdiction to try a suit by a ryot to set aside a sale of his holding which was held under the provisions of chapter vi of the Act.¹

Suit for compensation.

"Section 91. Any person aggrieved by an order under section 89 or section 90 directing any property to be delivered up or restored or its value to be paid to the distrainer, may institute a suit before the Civil Court against the distrainer for compensation."

A Revenue Court cannot set aside a sale under sections 111 and 118 of the Act.²

Recourse to Civil Court for setting aside or modifying District Collector's order.

A landholder who is dissatisfied with an order of the District Collector under section 138 (repair of irrigation works) may sue in a Civil Court to have it set aside or modified on either of the following grounds :

- (a) that he is under no obligation to repair the irrigation work concerned ;
- (b) that the portion of the charge which he is liable to pay under sub-section (1) has been wrongly calculated.

If the order is set aside or modified the Court shall direct the refund of any amount found to have been improperly levied.³

Right of appeal.

"Section 142. No Civil Court shall⁴ issue an injunction or, save as provided in section 138, entertain a suit⁵ regarding a District Collector's proceedings under chapter vii (relating to repair of irrigation works), but from any order issued by a District Collector⁵ under this chapter other than an order under section 138, an appeal shall⁵ [unless otherwise pro-

¹ *Rajah of Ramnad v. Venkataramaiyer* (1922), 45 Mad., 890.

² *Jagannadha Charyulu v. Satyanarayana Varaprasada Rau* (1919), 43 Mad., 351.

³ Added to section 138 of Mad. Act I of 1908, by Mad. Act IV of 1909, s. 6.

⁴ Mad. Act IV of 1909, s. 7.

⁵ *Ibid.*

vided for in Part B of the schedule to this Act] lie to the Board of Revenue, whose decision shall be final."

"Section 161. Where possession has been delivered under section 160 (execution of order to put landlord in possession), the defaulter may file a suit in a Civil Court within three months from the date of delivery for an order to set aside the proceedings and to restore him to possession, and subject to the result of such suit, if any, the defaulter's right and interest in the premises shall cease and determine. Determination of tenancy.

"Section 162. Nothing in sections 158 and 161 shall apply to any land in which the tenant has a saleable interest. Saving clause.

"Section 163.—(1) Any person who otherwise than by inheritance or legal transfer occupies ryoti land in an estate and has not been admitted as a ryot by the landholder shall be liable to ejectment as a trespasser by suit in a Civil Court." Ejectment of trespasser.

"Section 171. An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer on any objection made under section 169 (as to an entry on a settlement record), and such appeal shall lie to such superior Revenue authority as the Local Government may by rule prescribe or to an officer specially empowered by the Local Government in this behalf. Appeal to, and revision by, superior Revenue authority.

"Section 172. The Board of Revenue may, in any case, on application or of its own motion, direct the revision of any record of rights, or any portion of a record of rights, at any time within two years from the date of the final publication under sub-section (2) of section 166, or if there has been a settlement of rent under section 168, two years from the date of republication under sub-section (3) of section 170, but not so as to affect any order passed by a Civil Court under section 173 : Revision by Board of Revenue.

"Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

"Section 173.—(1) Any person aggrieved by an entry in a settlement record prepared under sections 168 to 171, and incorporated in a record of rights finally published under sub-section (3) of section 170, or by an omission to settle a rent, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land Entries in settlement record when open to question by civil suit.

to which the entry relates, or in respect of which the omission was made.

“(2) Such suit must be instituted within six months from the date of the final publication of the record of rights under sub-section (3) of section 170, or, if an appeal has been presented to a Revenue authority under section 171, then within six months from the date of the disposal of such appeal.

“(3) Such suit may be instituted on any of the following grounds, and on no others, namely :

- (a) that the relation of landholder and ryot does or does not exist ;
- (b) that the land is not liable to the payment of rent ;
- (c) that the land, although entered in the record of rights as being held rent free, is liable to the payment of rent ;
- (d) that any entry made under clauses (d), (e), and (j) of section 165 is incorrect ;
- (e) that special conditions in respect of holding at a favourable rate have been wrongly recorded or omitted ;
- (f) that the Revenue Officer has wrongly fixed the date from which the operation of the settled rent under the provisions of section 177 should take effect.

“The Secretary of State for India in Council shall not be made a defendant in any such suit.”

“(4) If the Court finds that the entry relating to rent is incorrect it shall, in cases (a) and (b) mentioned in sub-section (3), declare that no rent is payable, or direct that the Collector shall fix a fair and equitable rent ; in case (c) it shall declare that the land is liable to rent ; in cases (d) and (e) it shall decide what the entry shall be, and in case (f) it shall declare the date from which the rent settled is to take effect.

“(5) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.”

Stay of
proceedings
during
preparation of
record of
rights.

“Section 178.—(1) When an application has been made under section 168, no suit or proceeding shall be commenced or continued in any Civil or Revenue Court under sections 30, 38, and 40 until after the final publication of the record of rights under sub-section (3) of section 170.

“(2) When an order has been made under section 164 directing the preparation of a record of rights, no Civil or

Revenue Court shall entertain or proceed with any suit or application for the alteration of the rent in the area to which the record of rights applies until after the final publication of such record of rights.

"Section 179. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record of rights under chapter xi, or in respect of the framing, publication, signing, or attestation of such a record or of any part of it, or, save as provided in section 173, for the alteration of any entry in such a record of a rent settled under sections 168 to 172.

Limitation of jurisdiction of Civil Courts in matters other than rent, relating to the record of rights.

"Provided that any person who is dissatisfied with any entry in, or omission from, a record of rights framed in pursuance of an order made under sub-section (1) of section 164, which concerns a right of which he is in possession, may institute a suit for declaration of his right under chapter vi of the Specific Relief Act, 1877."

"Section 186.—(1) A principal Civil Court of original jurisdiction may, on the application of a landholder,

Acquisition by landholder of land for building and other purposes.

"and on being satisfied that he is desirous of acquiring the whole or part of a holding in his estate for some reasonable and sufficient purpose, having relation to the good of the holding or of the estate, including the use of the ground as building ground or for any religious, educational or charitable purpose or for the opening and working of mines,

"and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landholder upon such conditions as the Court may think fit, and require the ryot to sell his interest in the whole or such part of the holding to the landholder, upon such terms as may be approved by the Court, including full compensation to the ryot.

"(2) In determining the amount of compensation, the Court shall be guided, so far as may be practicable, by the provisions of sections 23 and 24 of the Land Acquisition Act (I of 1894), and shall add fifteen per centum to the full value of the land and improvements made by the ryot as compensation for the compulsory acquisition.

"Provided that, if the land has been acquired for the opening and working of mines, the Court shall, if the ryot has any right in the minerals, award compensation for such right."

Suits and
applications.

"Section 189.—(1) A Collector or other Revenue Officer specially authorised under this Act shall hear and determine as a Revenue Court all suits and applications of the nature specified in Parts A and B of the schedule, and no Civil Court in the exercise of its original jurisdiction,¹ shall take cognizance of any dispute or matter in respect of which such suit or application might be brought or made.

Appeals.

"(2) Decrees and orders passed under sub-section (1) shall be subject to appeal as provided in the sixth column of Parts A and B of the schedule.

"(3) The decision of a Revenue Court or of an appellate or revisional authority in any suit or proceeding under this Act on a matter falling within the exclusive jurisdiction of the Revenue Court shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court in which such matter may be in issue between them."

SCHEDULE.

PART A.—SUITS TRIABLE BY A COLLECTOR.

Serial Number.	Section of Act.	Description of Suit.	Court, if any, to which an appeal lies.
1	6	Suit to eject a trespasser from whom payment has been taken.	District Court.
2	30	For enhancement of rent payable by a ryot.	" "
3	38	For reduction of rent.	" "
4	40	For commutation of rent.	(a) " " Against the decree so far as it allows or refuses commutation — District Collector. ² (b) Against the decree fixing the valuation at time of commutation in so far as it determines the sum to be paid as money rent or the time from which such commutation shall take effect—District Court.

¹ This includes a Presidency Insolvency Court: *In the matter of Chidambara Chetty* (1920), 45

Mad., 31.

² *Sivanupandia Thevar v. Zamindar of Urkad* (1917), 41 Mad., 109.

PART A—continued.

Serial Number.	Section of Act.	Description of Suit.	Court, if any, to which an appeal lies.
5	55	To obtain a puttah. ¹	District Court.
6	56	To enforce acceptance of puttah.	" "
7	65	For compensation for withholding receipt.	" "
8	77	By landholder to recover arrears of rent. ²	" "
9	88	For damages when distrained property is stolen, lost, damaged or destroyed.	" "
10	95	By ryot to set aside distress.	" "
11	102	To recover from defaulting purchaser deficiency in price and costs resulting from second sale.	" "
12	112	To contest the right of sale of a holding.	" "
13	123	To recover from defaulting purchaser deficiency in price and costs resulting from second sale.	" "
14	127 (c)	For payment of the subsequent rent.	" "
15	144	To recover illegal exactions.	" "
16	149	To be indemnified against loss of rent when a holding is relinquished.	" "
17	151 (1)	To eject a ryot. ³	" "
18	151 (2)	For compensation or for an injunction or for the repair of the damage or waste.	" "
19	153	To eject a non-occupancy ryot. ⁴	" "
20	160	To set aside warrant of eviction.	" "
21	213	For damages not otherwise provided for.	" "

¹ *Ramanathan Chetty v. Arunachelam Chettiar* (1920), 44 Mad., 48.

² Where one only of several joint inamdars has acquired the kudivaram interest a suit does not lie in the Civil Court for rent: *Rajachari v. Tirumugoor Devasthanam* (1918), 41 Mad., 724. See exception to section 8 of the Act. This provision applies to a suit brought by an inamdar: *Appalanarasimhulu v. Sanyasi* (1912), 38 Mad., 39. A Revenue Court has no jurisdiction to try a suit for rent of private lands as defined in section 3 (10) of the Act: *Appa Rao Bahadur (Sri Raja) v. Naganna* (1913), 36 Mad., 7. "Rent" does not here include money due for pasturage: *Raja of Venkatagiri v. Ayyupareduli*

(1913), 38 Mad., 738.

³ *Upudrashta Venkata Sastrulu v. Seetharamudu (Divi)* (1919), 46 I. A., 123; 43 Mad., 166; 21 Bom. L. R., 925. See *Suryanarayana v. Palanna* (1918), 45 I. A., 209; 41 Mad., 1012; S.C. in Court below (1913), 38 Mad., 608.

⁴ That is on the grounds mentioned in s. 153. As to ejectment on other grounds, see *Ponnusamy Padayachi v. Karuppadayan* (1914), 38 Mad., 843. As to a decree granted before the commencement of the Act, see *Jampana Somadu v. Zamindar of Mirsapuram* (1918), 42 Mad., 315. As to a suit for ejectment from pasture land, see *post*, p. 589.

**PART B.—APPLICATIONS TO BE DISPOSED OF BY A DISTRICT COLLECTOR,
COLLECTOR, OR OTHER REVENUE OFFICER.**

Serial Number.	Section of Act.	Description of application.	Court, if any, to which an appeal lies.
1	15	As to the right to make an improvement or as to whether a particular work is or will be an improvement.	District Collector.
2	16	To register improvements.	Against refusal to register—District Collector.
3	17	For recording evidence relating to an improvement.	Against refusal to record evidence—District Collector.
4	25	For settlement of a fair and equitable rent.	District Collector.
5	32 (2)	For revision of enhancement of rent.	District Court.
6	42	For alteration of rent with area.	District Collector.
7	45	For determining sum payable by a person occupying land otherwise than by inheritance or legal transfer.	District Court.
8	46	For settlement of rent of land for the purpose of the section.	District Collector.
9	(proviso)		
10	48 (2)	For ejecting a non-occupancy ryot.	" "
11	54	For permission to file puttah in the office of Collector or other officer.	" "
12	68	For permission to deposit rent in the office of Collector or other officer.	" "
13	71 (3)	For repayment of deposited rent. ¹	None.
14	74	For deputation of officer to make the appraisement of division.	"
15	89	By third person having a right or interest in distrained property. ²	"
16	90	For delivery of property fraudulently conveyed to prevent distress or for payment of the value of such property. ³	"
17	90	For restoration of distrained property forcibly or clandestinely taken away, or for payment of the value of such property.	"
18	106 (5)	For determination of distress expenses.	"
19	114	For sale of holding.	"
20	181	To set aside sale of holding.	"
21	133	For grant of time to pay arrears due.	"
22	137 *	(By a landholder against) ⁴ an order under section 137 for the repair of an irrigation work.	District Court.
23	137	By ryots to execute works in default of landholder.	Against refusal to authorise execution — District Court.
24	139	For the recovery of the cost of the repair of an irrigation work.	District Court.

¹ This does not bar a suit in a Civil Court: s. 71.

² This does not prevent a suit in a Civil Court for compensation: s. 91.

³ The figure "137" was substituted

for "185" by s. 10 of Mad. Act IV of 1909.

⁴ These words were substituted for the word "For" by s. 10 of Mad. Act IV of 1909.

PART B.—continued.

Serial Number.	Section of Act.	Description of application.	Court, if any, to which an appeal lies.
24	141	For determination of irrigated or unirrigated rate.	District Collector.
25	145 (2)	For determining rent when holding is sub-divided or transferred.	" "
26	149 (1)	For revision of the apportionment of rent made by a landholder.	" "
27	158	For issue of warrant to enter upon and take possession of the premises.	" "

The following suits are cognizable by the Civil Courts only:

(a) A suit for a declaration that a sale of a holding under section 111 of the Act is void having regard to section 115 of the Act.¹

(b) A suit for ejectment from pasture lands, and for pasture rent.²

“Section 190.—(1) A second appeal shall lie to the Board of Revenue against the orders passed on appeal by a District Collector in the case of an application under section 15 or a suit under section 40.” Second appeals.

The High Court has power to transfer appeals under the Act from the Court of one District Judge to the Court of another District Judge.³ Transfer.

There is no appeal to the High Court from orders made by a District Judge under the Act.⁴

Subject to the rules as to second appeals⁵ there is a second appeal to the High Court⁶ from an appellate decree of the District Judge,⁷ but none from an appellate decree of the Collector.⁸ Such appeal is not barred by section 102 of the Civil Procedure Code.⁹ Second appeals.

The High Court has also powers of revision.¹⁰ Revision.

“Section 204.—(1) The District Collector may, by written Transfer of

¹ *Chidambaram Pillai v. Mutham-
mal* (1914), 38 Mad., 1042.

² *Raja of Venkatagiri v. Ayyapa-
reddi* (1918), 38 Mad., 738.

³ S. 192 (a) of the Act; Act V of 1908, s. 24, ante, p. 320.

⁴ *Venkata Ramayya (Rajah) v. Veeraswami* (1917), 41 Mad., 554.

⁵ Ante, pp. 342-346.

⁶ See s. 192 of the Act: *Venkata-
ramier v. Vaithilinga Thambiran* (1918), 38 Mad., 656.

⁷ See *Sivanupandia Thevar v. Zamindar of Urkad* (1917), 41 Mad., 109.

⁸ *Ibid.*

⁹ Act V of 1908: *Zamindar of Tarla v. Kanda Barikavadu* (1920), 44 Mad., 697.

¹⁰ *Paramaswamy Aiyangar v. Alamelu Natchiar Ammal* (1918), 42 Mad., 76; *Ramasami Goundan v. Kali Goundan* (1918), 42 Mad., 310. See ante, p. 357.

order, distribute, in such manner as appears fit, any business cognizable under this Act by any Collector or other Revenue officer of the district, and by like order he may withdraw any case pending before such Collector or other Revenue Officer and either dispose of it himself, or by written order refer it for disposal to any other Collector or Revenue Officer in the district.

“(2) The Board of Revenue shall have the like powers of distribution, withdrawal, and reference in respect of all District Collectors and, notwithstanding any order of the District Collector passed under sub-section (1), in respect of Revenue Officers subordinate to him.

Power to call
for and revise
proceedings of
Revenue
Officers.

“Section 205. The Board of Revenue or the District Collector may call for the record of any proceeding before a Revenue Officer from whose decision no appeal lies, if such officer appears to have exercised a jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits, where such contravention has produced a serious miscarriage of justice; and the Board of Revenue or the District Collector, as the case may be, may, after hearing the parties if they attend, pass such order as seems fit.

Power to
invest Revenue
or Judicial
Officer with
powers of
Collector.

“Section 206. The Local Government may invest any Revenue or Judicial Officer with all or any of the powers of a Collector, for any local area, in respect of all or any classes of original suits or proceedings instituted under this Act, and may withdraw such powers, and the decisions passed by such Revenue or Judicial Officer shall be subject to appeal as if they were the decisions of the Collector who would have taken cognizance of the suits or proceedings if the Revenue or Judicial Officer had not been so invested.

Appointment
of additional
District
Collector.

“Section 207. The Local Government may appoint an officer, in addition to the District Collector, to exercise all or any of the powers of a District Collector under this Act.

District
Collectors and
Collectors for
Scheduled
Districts.

“Section 208. In the Scheduled Districts of Ganjam and Vizagapatam the Agent to the Governor, and in the Scheduled Districts of Godavari the Government Agent, shall for the purposes of this Act be the District Collector, and the Assistant Agents in these districts shall for the same purposes be Collectors.

Place of
institution of

“Section 209.—(1) All suits or proceedings brought or

taken under this Act shall be brought or taken in the revenue division in which the holding or major portion of the holding in connection with which the suit is brought or the proceedings are taken is situated. ^{suits or proceedings.}

“(2) Subject to the orders of a District Collector, a Collector or Revenue Officer may sit for the disposal of suits and proceedings under this Act in any place within the district.”

“Section 213.—(1) Any person deeming himself aggrieved ^{(General right of suit for damages.} (a) by any proceedings taken under colour of this Act, or (b) by neglect or breach of any of its provisions, shall be at liberty to seek redress by filing a suit for damages before the Collector.

“(2) This section shall not be deemed to bar any right of action in a Civil Court in any case not taken out of its jurisdiction by this Act.

“(4) Provided always that any person who files a suit for damages under sub-section (1) shall not be entitled to file a suit in respect of the same cause of action before a Civil Court.”¹

Orissa.

The Orissa Tenancy Act, 1913 (B. & O. Act II of 1913), which applies to the districts of Cuttack, Puri, and Balasore, except any area or part of an area which is constituted a municipality under the Bengal Municipal Act, 1884, and which is specified in this behalf by notification issued by the Local Government, contains the following (amongst other) provisions :

As to the power of the Collector to decide whether a tenure ^{Transfers of tenures.} is transferable, see sections 14 to 16.

“Section 17. No decision of the Collector under sections ^{Civil Court.} 14, 15, or 16 shall affect the right of the landlord or of the transferee to establish the transferability or otherwise of the tenancy by suit in the Civil Court.”

As to the power of a Collector to determine whether the ^{Transfer of occupancy holding.} transfer of an occupancy holding may be allowed, see sections 30, 31.

“Section 31.—(6) An appeal shall lie to the Collector of ^{Appeal.} the district from any order passed under sub-section 3 (decision as to whether landlord had good and sufficient reason to object

to transfer) by an officer subordinate to him, and his order in appeal shall, subject to any order which may be passed by the Commissioner on revision, be final:

“Provided that an appeal shall lie to the Commissioner from any order passed by the Collector under sub-section 3, and the order of the Commissioner on appeal shall be final.”

Enhancement.

As to enhancement of rent by suit see sections 35 to 44.

Reduction.

As to a suit by an occupancy-raiyat for reduction of rent, see section 45.

Commutation.

As to application to have rent commuted, see section 47.

Ejectment.

As to a suit against a non-occupancy raiyat for ejectment, see section 53.

Alteration in area.

As to a suit for alteration of rent or alteration of area, see section 60.

Deposit.

“Section 73.—(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government in respect of anything done by a Court receiving a deposit under sections 70 to 72; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.”

Appeal to, and revision by, superior Revenue authorities.

“Section 125.—(1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer prior to the final publication of the record of rights, on any objection made under section 120, sub-section (3) (objection to entry), or section 123 (publication of settlement rent-roll); and such appeal shall lie to such superior Revenue authority as the Local Government may, by rule, prescribe.

“(2) The Board of Revenue may, in any case under this Part (settlement of rents, etc., where a settlement of land-revenue is being or about to be made), on application or of its own motion, direct the revision of any record of rights, or any portion of a record of rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 126:

“Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and to be heard in the matter.”

Jurisdiction of Civil Courts in

By section 126 (1) any person aggrieved by an entry of

rent settled in a Settlement Rent Roll prepared under sections 119 to 124 of the Act and incorporated in a record of rights finally published under section 116, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would have had jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

matters
relating to
rent.

Such suit may be instituted on any of the following grounds, and on no others, namely :

- (a) that the land is not liable to payment of rent ;
- (b) that the land, although entered in the record of rights as being held rent free, is liable to the payment of rent ;
- (c) that the relation of landlord and tenant does not exist ;
- (d) that land has been wrongly recorded as part of a particular estate, sub-proprietary interest, or tenancy ;
- (e) that the tenant belongs to a class different from that to which he is shown in the record of rights as belonging ;
- (f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of section 139, proviso (a), or has wrongly fixed the date from which it is to take effect under that clause ;
- (g) that the special conditions and incidents of the tenancy or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have or has been wrongly recorded.

As to the settlement of rents by the Civil Court, see section 126 (4).

As to the settlement of rents and decision of disputes in cases where a settlement of land revenue is not being or is not about to be made, see chapter xi, part iii of the Act.

Settlement of
rent.

"Section 129. Where, in any proceedings for rent under part iii of chapter ix, any of the following issues arise :

Decision of
questions
arising during
the course of
settlement of
such rents.

- (a) whether the land is, or is not, liable to the payment of rent ;
- (b) whether the land, although entered in the record of rights as being held rent free, is liable to the payment of rent ;
- (c) whether the relation of landlord and tenant exists ;

- (d) whether the land has been wrongly recorded as part of a particular estate, sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietary interest or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record of rights as belonging;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land have not, or has not, been recorded, or have or has been wrongly recorded;

the Revenue Officer shall try and decide such issue and settle the rent under section 128 accordingly :

“ Provided that the Revenue Officer shall not try any issue under this section which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried by a Revenue Officer in a suit instituted before him under section 130.”

Section 130 deals with an institution of a suit before a Revenue Officer in proceedings under this Part, and permits the Revenue Officer, subject to such rules as the Local Government may prescribe, in this behalf, to transfer any particular case or class of cases to a competent Civil Court for trial.

Transfer to
Civil Court.

“ Section 134. Subject to the provisions of section 135, a Civil Court shall not entertain any application or suit concerning any matter which is or has been the subject of an application made, suit instituted or proceeding taken under sections 128 to 132 of the Act (settlements of rent and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made).”

Bar to
jurisdiction.

By section 135 the Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under sections 128 to 133 of the Act.¹

Appeals from
decisions of
Revenue
Officer.

In such cases an appeal lies to the Special Judge from the decisions of a Revenue Officer.²

“ Section 135.—(3) Subject to the provisions of sections 103,³

¹ See above.

² *Ante*, pp. 345, 346.

³ B. & O. Act II of 1913, s. 135 (2).

104,¹ and 107² of the Code of Civil Procedure, an appeal lies to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent), as if he were a Court subordinate to the High Court within the meaning of the said section 103 :

“ Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 113 or settled under section 128 or section 132 of the Act.”

“ Section 141. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record of rights under this chapter, or in respect of the framing, publication, signing or attestation of such a record, or of any part of it, or, save as provided in section 126, for the alteration of any entry in such a record of a rent settled under sections 119 to 124 :

Bar of suits relating to record of rights.

“ Provided that any person who is dissatisfied with any entry in, or omission from, a record of rights framed in pursuance of an order made under clause (d) of sub-section (2) of section 112, which concerns a right of which he is in possession, may institute a suit for declaration of his right under chapter vi of the Specific Relief Act, 1877.”³

“ Section 193. The following suits and applications shall be cognizable by the Collector, and shall be instituted, tried, and heard under the provisions of this Act, and shall not be cognizable in any other Court except as provided in this Act, namely :

Certain suits and applications cognizable only by the Collector.

- (a) All suits and applications under any portion of this Act other than chapter xi (record of rights and settlement of rents), and
- (b) all suits by landlords and others in receipt of the rent of the land, against any agents employed by them in the management of land or the collection of rents, or against sureties of such agents, for moneys received or accounts kept by such agents in the

¹ *Ante*, pp. 346, 347.

² Act I of 1877.

³ *Ante*, p. 352.

course of such employment, or for papers in their possession.”¹

Appeals.

“Section 204.—(1) Except where otherwise expressly provided in this Act, an appeal from an order or decree passed under the Act shall lie in the following manner :

“Every order passed by a Collector not being—

(a) a judgment in a suit;

(b) an order passed in the course of a suit and relating to the trial thereof, or

(c) an order passed after decree and relating to the execution thereof,

shall be appealable—

(i) to the Commissioner, or

(ii) if passed by a Deputy Collector exercising the powers of a Collector to the Collector.

“(2) In suits where the subject-matter of the claim or dispute does not exceed one hundred rupees in value, and the judgment does not decide a question whether rent is payable for land or not, or a question relating to title to land or to some interest in land, as between parties to the suit, the judgment of the Collector shall be final :

“Provided that if the suit be tried and decided by a Deputy Collector exercising the powers of a Collector, an appeal shall lie from the judgment of the Deputy Collector to the Collector.

“(3) In suits other than those referred to in sub-section (2) an appeal from the judgment of the Collector or Deputy Collector shall lie to the District Judge, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court :

“Provided that a second appeal shall lie to the High Court under Order XLII in the first Schedule to the Code of Civil Procedure, 1908, from any appellate decree passed by the District Judge under this section.²

“(4) An appeal shall lie against an order passed in the course of a suit and relating to the trial thereof, or an order passed after decree and relating to the matter thereof (except an order which is not appealable under the Code of Civil

¹ As to the power of a Civil Court to determine incidents of tenancy, see sec. 210 of the Act: *Banamali Satnathi v. Artaran Mahapatra*

(1918), 4 Pat. L. J., 72.

² See *Mritunjoy Praharaj v. Jagannath Jau (Sree)*, 8 Pat. L. J., 351.

Procedure, 1908),¹ to the Court to which an appeal from the judgment on the suit could lie.

"(5) Notwithstanding anything hereinbefore contained, the Collector may call for the record of any case in which any Deputy Collector has passed a decree or order to which this section applies, if it appears that such officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and the Collector may pass such order as he thinks fit."²

As to the summary procedure for the recovery of rents under the Bihar and Orissa Public Demands Recovery Act, 1914,³ see section 211 of the Orissa Tenancy Act, 1918.

As to the powers of Revenue Officers to remit or suspend rent in temporarily settled districts, see section 249 of the Orissa Tenancy Act, 1918. An order passed by the Revenue Officer in such cases cannot be contested by suit in any Court.⁴

No suit shall lie for the recovery of any rent of which the payment has been remitted, or, during the period of suspension, of any rent of which the payment has been suspended; and, so long as a suit does not lie, such rent shall not be legally payable.⁵

Oudh.

The Oudh Rent Act, 1886 (XXII of 1886), as amended by the United Provinces Acts, XX of 1890, IV of 1901, and IV of 1921, provides:

"Section 108. Except in the way of appeal as hereinafter provided,⁶ Courts other than Courts of Revenue shall not take cognizance of the following descriptions of suits, and those suits shall be determined in Courts of Revenue in the manner provided in the Act, and not otherwise:

Suits cognizable under the Act.

A.—Suits by a Landlord:

- (1) for the delivery by a tenant of the counterpart of a patta;
- (2) for arrears of rent or, where rent is payable in kind, for the money equivalent of rent;
- (3) for the enhancement of the rent of a tenant;
- (3A) for the determination of the rent of a tenant;⁷

¹ *Ante*, chap. xxviii.

² Cf. *ante*, pp. 354, 355.

³ B. & O. Act IV of 1914.

⁴ B. & O. Act II of 1913, s. 249 (2).

⁵ *Ibid.* s. 249 (3).

⁶ Act XX of 1890, s. 46.

⁷ Inserted by U. P. Act IV of 1921,

s. 58 (1).

- (4) for the ejectment of a tenant;¹
- (5) against patwaris or agents employed by landlords in the management or the collection of revenue or rent, or against the sureties of those patwaris or agents for money received or accounts kept by the patwaris or agents in the course of their employment as aforesaid, or for papers in their possession, or for the rendering and settlement of accounts;
- (5A)² for resumption of, or assessment or enhancement of, rent or land held rent free or at a favourable rate of rent, or for declaration of any right as determined under sections 107G or 107H.³

A suit to cancel an instrument of lease relied upon by the defendant lies in a Civil Court.⁴

“B.—Suits by an Under-proprietor or a Tenant :

- (6) for establishing a right of occupancy;
- (7) for the delivery by a landlord of a patta;
- (8) for contesting a notice of enhancement or ejectment;
- (9) for compensation—
 - (a) on account of illegal enforcement of payment of rent, or of any sum in excess of rent due, or
 - (b) on account of the withholding of a receipt for a payment of rent, or
 - (c) on account of illegal ejectment, or
 - (d) on account of loss caused by the making of an improvement by the landlord on the holding of the tenant, or
 - (e) on account of the value of standing crops belonging to an ejected tenant;
- (10) for the recovery of the occupancy of any land which has been treated by a landlord as abandoned or from which an under-proprietor or tenant has been illegally ejected by the landlord, or for possession by a person in whose favour an exproprietary tenancy arises under section 7A :

¹ *Maheshar Parshad v. Muhammad Ewas Ali Khan* (1909), 36 I. A., 114; 81 All., 894; 18 C. W. N., 1098.

² Inserted by U. P. Act IV of 1921, s. 6.

³ U. P. Act IV of 1921, s. 58 (2).

⁴ *Rampal Singh (Raja) v. Balbhaddar Singh* (1902), 29 I. A., 203; 25 All., 1; 6 C. W. N., 849; 4 Bom. L. R., 832.

Provided that nothing in this section shall operate to debar any person claiming to be an under-proprietor who has been ejected under the provision of section 60 from bringing a suit for possession in a Civil Court ;¹

- (10A)² under the third proviso to section 80A, for the recovery of the occupancy of a holding or part thereof, and for compensation for dispossession ;²
- (10B) for occupancy of a holding by a person claiming such occupancy as the heir of the deceased tenant of the holding ;³
- (11) for contesting the exercise of the power of distraint conferred on landlords and others by the Act, or any acts purporting to be done in exercise of that power, or for compensation for illegal distraint ; or for recovery of the amount realised by proceedings in distraint ;⁴
- (12) for abatement of rent ;⁵
- (13) for recovery of compensation for improvements ;⁶
- (13A) for the recovery of an amount which was recovered from him under section 12A, in excess of the amount due from him.⁷

C.—*Suits regarding the Division or Appointment of Produce :*

- (14) to set aside an award in respect of a division, estimate, appraisement, or proceeding under section 82.

D.—*Suits by and against Lambardars,⁸ Co-sharers and Muafidars :⁹*

- (15) by a sharer against a lambardar or co-sharer for a share of the profits of an estate or any part thereof, or for the rendering and settlement of accounts in respect of those profits ;

¹ U. P. Act IV of 1921, s. 53 (3).

² *Ibid.* s. 53 (4).

³ *Ibid.* s. 53 (5).

⁴ *Ibid.* s. 53 (6).

⁵ *Ibid.* s. 53 (7).

⁶ *Ibid.* s. 53 (8).

⁷ *Ibid.* s. 53 (9).

⁸ A lambardar is a cultivator who,

either on his own account, or as the representative of other members of the village, pays the Government dues and is registered in the Collector's roll according to his number: Wilson's Glossary, p. 309.

⁹ *I.e.* holders of rent-free lands: *ibid.* p. 346.

(16) by a lambardar, or by a pattidar¹ who is entitled to collect rent of the patti, for arrears of revenue or rent payable through him by the co-sharers whom he represents, or by a lambardar for village expenses and other dues for which the co-sharers may be responsible to him or against a joint lambardar for compensation for revenue or rent paid by the lambardar on account of the joint lambardar;

(17) by co-sharers against lambardars, or by proprietors or lessees against muafidars or assignees of revenue, for compensation on account of exaction in excess of revenue or rent, or on account of the withholding of a receipt for the payment of revenue or rent;

(18) by muafidars or assignees of revenue for arrears of revenue.

Grades of
Courts for the
purposes of
the Act.

"Section 109. For the purposes of this Act there shall be five grades of Courts of Revenue, namely:

- (1) the Assistant Collector of the second class;
- (2) the Assistant Collector of the first class;
- (3) the Collector;
- (4) the Commissioner;
- (5) the Board.²

Power to
invest persons
with powers of
Assistant
Collector.

"Section 110.—(1). The Governor in Council³ may from time to time confer upon any person⁴ the powers of an Assistant Collector of the first or of the second class under the Act, and may at any time withdraw those powers.

(2) "In conferring powers under this section the Chief Commissioner³ may empower persons specially by name or classes of officials generally by their official titles.

Deputy Com-
missioner to
have Col-
lector's
powers.

"Section 111. The Deputy Commissioner shall exercise the powers of a Collector under the Act.

Investment of
settlement
officers with
powers of
Collector or
Assistant
Collector.
Jurisdiction of
Assistant

"Section 112. The Governor in Council³ may invest any officer employed making or revising settlement of revenue with all or any of the powers of a Collector or Assistant Collector under this Act.

"Section 113. An Assistant Collector of the second class may try and determine suits of the description mentioned in

¹ The holder of a share in a coparcenary village or estate: Wilson's Glossary, p. 41.

² Act XX of 1890, s. 47.

³ U. P. Act IV of 1921, s. 2.

⁴ *Ibid.* s. 54.

clauses (1), (2), (7), (12), (15), (16), (17) and (18) of section 108,¹ of which the value does not exceed one hundred rupees. Collector of the second class.

"Section 114. An Assistant Collector of the first class Jurisdiction of Assistant Collector of first class. may try and determine suits of every description of which the value does not exceed five thousand rupees.

"Section 115.—(1) A Collector shall have all the powers Jurisdiction of Collector. conferred on an Assistant Collector of the first class and on a Collector by this Act.²

"(2)³ Whenever the state of the public business so requires, the Governor in Council⁴ may invest any Assistant Collector of the first class with the powers of a Collector for the trial and determination of appeals under the Act, other than appeals from decisions of that Assistant Collector, and with the powers of a Deputy Commissioner under sections 24⁵ and 25,⁶ and may invest any Collector with all or any of the powers of a Commissioner under the Act.

"Section 116.⁷ Subject to the provisions of section 119,⁸ Appeals to Courts of Revenue. and of the Code of Civil Procedure, as applied by the Act, an appeal lies from an original appellate decree or order made under the Act, as follows, namely :—

- (a) to the Collector or to an Assistant Collector of the first class specially empowered in this behalf⁹ when the decree or order is made by an Assistant Collector of the second class ;
- (b) to the Commissioner when a decree order is made by a Collector or an Assistant Collector of the first class ;
- (c) to the Board when the decree or order is made by a Commissioner :

" Provided that, subject to the provisions of section 119,¹⁰ an appeal from an original decree or order of a Collector does not lie except on the grounds mentioned in section 100 of the Code of Civil Procedure,¹¹ and that the decree or order made on that appeal shall be final."

¹ *Ante*, pp. 598-600.

² S. 115 (1), as amended by Act XX of 1890, s. 48. U. P. IV of 1921, s. 57 (a).

³ As amended by U. P. Act IV of 1921, s. 57 (b).

⁴ U. P. Act IV of 1921, s. 2.

⁵ As to permission to make improvements.

⁶ As to the registration of outlay

on improvements.

⁷ As substituted by Act XX of 1890, s. 49.

⁸ *Post*, p. 602.

⁹ U. P. Act IV of 1921, s. 58.

¹⁰ *Post*, p. 602. U. P. Act IV of 1921, s. 58.

¹¹ Act V of 1908, *ante*, pp. 342, 343 ; see s. 135 of Act XXII of 1886.

Appeals to
Judge and
Judicial Com-
missioner.

"Section 119. Subject to the provisions of the Code of Civil Procedure as applied by the Act, an appeal lies from an original or appellate¹ decree or order of a Collector or of an Assistant Collector of the first class in a suit of a description mentioned in clause (2), (5), (9), sub-clause (a) or (b), (11), (18A), (15), (16), (17), (18) of section 108,² as follows, namely :

(a) to the District Judge, if the value of the suit does not exceed five thousand rupees ;

(b) to the Judicial Commissioner, if the value of the suit exceeds five thousand rupees.

Second
appeals.

"Section 119B.³ From the decrees passed under the Act in appeal by District Judges, except decrees passed in appeal from appellate decrees or orders of Collectors or Assistant Collectors of the first class,⁴ an appeal lies to the Judicial Commissioner in all cases in which a second appeal is allowed by the Code of Civil Procedure, and subject to the provisions of the Indian Limitation Act (IX of 1908).

Powers of
Appellate
Court.

"Section 119C.³ For the purpose of deciding appeals under the Act, a District Judge and the Judicial Commissioner have the powers conferred by the Court under the Act.

Appeal from
Deputy Com-
missioner.

"Section 120. An order of a Deputy Commissioner sanctioning a remission of rent under section 19, or granting or refusing an application under section 24 (as to improvement of holding), or determining the amount of the outlay on an improvement under section 25, or authorising or refusing to authorise the acquisition of a holding or part thereof under section 30A,⁵ is subject to appeal to the Commissioner, whose order on the appeal is final.

Review by
Board.

"Section 120A.⁶ The Board may review and may rescind, alter, or confirm any decree or order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the decree or order.

Distribution of
business.

"Section 121. The Deputy Commissioner may, by order in writing, direct that any business cognizable by him and the Courts subordinate to him shall be distributed among those Courts in such manner as he thinks fit :

"Provided that such direction does not empower any Court

¹ U. P. Act IV of 1921, s. 59.

⁴ U. P. Act IV of 1921, s. 60.

² *Ante*, pp. 597, 598.

⁵ *Ibid.* s. 61.

³ Inserted by Act XX of 1890, s. 53.

⁶ Inserted by Act XX of 1890, s. 55.

to exercise any power or deal with any business beyond the limits of its proper jurisdiction.

"Section 122.¹ The Deputy Commissioner may withdraw any suit or other proceeding instituted in any Court subordinate to him, and try it himself, or refer it for trial to any other such Court competent to try it. Transfer of suits and proceedings.

"Section 123.² The Board or the Commissioner may order that any suit or other proceeding pending in any Court subordinate to the Board or the Commissioner shall be transferred to any other such Court competent as regards the nature of the case to dispose of it."

As to the general subordination of the Courts, see sec- Subordination.
tion 24 of the Act.

"Section 124A.³ If, in any suit instituted or on any appeal presented, in a Civil Court or in any Court of Revenue, the Judge or presiding officer doubts whether he is precluded by the Act from taking cognizance of the suit or appeal, he may refer the matter to the Judicial Commissioner. Reference of question of jurisdiction to Judicial Commissioner.

"(2) On any such reference being made, the Judicial Commissioner may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as the Judicial Commissioner may in his order declare to be competent to take cognizance of the suit or appeal.

"(3) The order of the Judicial Commissioner is final and cannot be questioned by the same parties in the same suit.

"Section 124B.⁴ In all suits instituted in any Civil Court or Court of Revenue, in which an appeal lies to the District Judge or the Judicial Commissioner, an objection that the suit was instituted in the wrong Court shall not be entertained by the Appellate Court, unless such objection was taken in the Court of first instance; but the Appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court. Objection to jurisdiction taken in Court of first instance.

"Section 124C.⁵ If in any such suit such objection was taken in the Court of first instance, but the Appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

¹ As amended by Act XX of 1890, s. 56.

² *Ibid.* s. 57.

³ Inserted by Act XX of 1890, s. 59.

⁴ *Ibid.*

⁵ *Ibid.*

"Section 124D.¹ If in any such suit the Appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its orders either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit."

Punjab.

Punjab
Tenancy Act.

The law as to landlord and tenant in the Punjab is to be found in the Punjab Tenancy Act, 1887,² as amended by Punjab Act I of 1906. Those Acts extend to the whole of the territories (including the Pargana of Spiti) for the time being administered by the Governor of the Punjab, subject in the case of the Hazara district to certain modifications.³

With certain modifications the Act applies also to the North-West Frontier Province.⁴

The following provisions are to be found in the Punjab Tenancy Act, 1887.

By section 33 a Revenue Officer may determine an application for the recovery of rent from attached produce, and his finding has the force of a decree between the landlord and the tenant.

Specific Relief
Act.

"Section 51. Possession of a tenancy or of any land comprised in a tenancy shall not be recoverable under section 9 of the Specific Relief Act, 1877, by a tenant dispossessed thereof."

Revenue
Officers.

"Section 75.—(1) There shall be the same classes of Revenue Officers under this Act as under the Punjab Land Revenue Act, 1887,⁵ and, in the absence of any order of the Local Government⁶ to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under that Act shall be a Revenue officer of the same class having jurisdiction within the same local limits under this Act.

"(2) The expressions 'Collector' and 'Financial Com-

¹ Inserted by Act XX of 1890, s. 59.

² Act XVI of 1887.

³ S. 1 (2); Reg. XIII of 1887, s. 3.

⁴ See Reg. VII of 1901.

⁵ Act XVII of 1887.

⁶ In the North-West Frontier Province read "Chief Commissioner:" Reg. VII of 1901, s. 6 (1) (b).

missioner' have the same meaning in this Act as in the Punjab Land Revenue Act, 1887.

"Section 76.—(1) The following applications and proceedings shall be disposed of by Revenue Officers as such, and no Court shall take cognizance of any dispute or matter with respect to which any such application or proceeding might be made or had :

Applications and proceedings cognisable by Revenue Officers.

FIRST GROUP :

- (a) Proceedings under section 27 for the adjustment of rents expressed in terms of the land revenue ;"

(In the Hazara District proceedings under section 27 for the adjustment of cash rents is here added.¹)

- " (b) proceedings relating to the remission and suspension of rent under section 30 ;²

- (c) applications under section 43 for the ejectment of a tenant against whom a decree for an arrear of rent in respect of his tenancy has been passed and remains unsatisfied ;

- (d) applications under section 45, sub-section (5), for the ejectment of a tenant on whom a notice of ejectment has been served and who has not instituted a suit to contest his liability to be ejected, but has claimed compensation under section 71 ;

- (e) applications under section 53 or section 54 for the fixing of the value of a right of occupancy ;

- (f) applications under section 53 or section 54 by landlords for possession of land the right of occupancy in which has become extinct ;

- (g) proceedings under chapter vi with respect to the award of compensation for improvements or disturbance.

SECOND GROUP :

- (h) applications under section 17 with respect to the division or appraisement of produce ;

- (i) applications under section 45, sub-section (5), for the

¹ S. 27A, added by Reg. III of 1904, Punjab Tenancy Act, 1887, Amendment Act, 1906 (Punj. Act I of 1906), s. 2.

² S. 30 has been amended by the ss. 3 to 5.

ejection of a tenant on whom a notice of ejection has been served and who has not instituted a suit to contest his liability to be ejected and has not claimed compensation under section 71;

(j) applications for the determination—

(i) under section 49 of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejection of a tenant, or

(ii) under section 49 or section 74 of the value of such crops or of the sum payable to the tenant for labour and capital expended by him in preparing land for sowing.

THIRD GROUP :

(k) applications under section 31 by tenants to deposit rent;

(l) applications under section 36 for service of notice of relinquishment;

(m) applications under section 43 for service of notice of ejection;

(n) applications under section 53 or section 54 for service of notice of intended transfer or of intended foreclosure or other enforcement of lien.

“(2) Except as otherwise provided by any rule made by the Financial Commissioner in this behalf:

(a) a Collector or an Assistant Collector of the first grade may dispose of any of the applications and proceedings mentioned in sub-section (1);

(b) an Assistant Collector of the second grade, not being a Naib-Tahsildar, may dispose of any of the applications mentioned in the second and third groups of that sub-section; and

(c) a Naib-Tahsildar, when invested with the powers of an Assistant Collector of the second grade, may dispose of any of the applications mentioned in the third group of that sub-section.

“Section 77.—(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3), or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

Revenue
Courts and
suits cogniz-
able by them.

“(2) There shall be the same classes of Revenue Courts as of Revenue Officers under this Act, and, in the absence of any order of the Local Government¹ to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under this Act shall be a Revenue Court of the same class having jurisdiction within the same local limits.

“(3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :

- (a) suits between landlord and tenant for enhancement or reduction of rent under section 24 ;
- (b) suits between landlord and tenant for addition to or abatement of rent under section 28 or for commutation of rent ;
- (c) suits under section 34 for the determination of rent or other sum on the expiration of the term of an assessment of land-revenue ; and suits relating to the rent to be paid and a mortgage made in accordance with form (c) as prescribed by section 6 of the Punjab Alienation of Land Act, 1900 (XIII of 1900).²

SECOND GROUP :

- (d) suits by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right ;
- (e) suits by a landlord to eject a tenant ;³
- (f) suits by a tenant under section 45 to contest liability to ejectment, when notice of ejectment has been served ;
- (g) suits by a tenant under section 50 for recovery of possession or occupancy, or for compensation or for both ;
- (h) suits by a landlord to set aside a transfer made of a right of occupancy, or to dispossess a person to whom such a transfer has been made, or for both purposes ;
- (i) any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held ;

¹ In the North-West Frontier Province read “ Chief Commissioner ” : see Reg. VII of 1901, s. 6 (1), (b).

² As amended by Act XIII of 1900, s. 22.

³ See s. 48.

- (j) suits for sums payable on account of village-cesses or village-expenses ;
- (k) suits by a co-sharer in an estate or holding for a share of the profits thereof or for a settlement of accounts ;
- (l) suits for the recovery of over-payments of rent or land-revenue or of any other demand for which a suit lies in a Revenue Court under this sub-section ;
- (m) suits relating to the emoluments of kanungos, zaildars, inamdars or village-officers.

THIRD GROUP :

- (n) suits by a landlord for arrears of rent or the money-equivalent of rent, or for sums recoverable under section 14 ;
- (o) suits by a landowner to recover moneys claimed as due for the enjoyment of rights in or over land or in water, including rights of irrigation, rights over fisheries, rights of pasturage and forest rights ;
- (p) suits for sums payable on account of land-revenue or of any other demand recoverable as an arrear of land-revenue under any enactment for the time being in force, and by a superior landowner for other sums due to him as such.

“(4) Except as otherwise provided by any rule made by the Financial Commissioner¹ in this behalf,—

- (a) a Collector may hear and determine any of the suits mentioned in sub-section (3) ;
- (b) an Assistant Collector of the first grade may hear and determine any of the suits mentioned in the second and third groups of that sub-section, and, if he has by name been specially empowered in this behalf by the Local Government,² any of the suits mentioned in the first group ; and
- (c) an Assistant Collector of the second grade may hear and determine any of the suits mentioned in the third group.”

¹ In the North-West Frontier Province read “Revenue Commissioner”: Reg. VII of 1901, s. 6 (1) (e).

² In the North-West Frontier Province read “Chief Commissioner”: Reg. VII of 1901, sec. 6 (1) (b).

As to the procedure where a revenue matter is raised in a Civil Court, see proviso added to section 77 by section 2 of Punjab Act III of 1912.¹

"Section 78.—(1) The general superintendence and control over all other Revenue Officers and Revenue Courts shall be vested in, and all such officers and Courts shall be subordinate to, the Financial Commissioner.²

Superintendence and control of Revenue Officers and Revenue Courts.

"(2) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue Officers and Revenue Courts in his division.³

"(3) Subject as aforesaid and to the control of⁴ the Commissioner, a Collector shall control all other Revenue Officers and Revenue Courts in his district.

"Section 79.—(1) The Financial Commissioner or a Commissioner or Collector may withdraw any case pending before any Revenue Officer or Revenue Court under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer or Revenue Court under his control.

a Power to distribute business and withdraw and transfer cases.

"(2) The Financial Commissioner⁵ or a Commissioner or Collector may withdraw any case pending before any Revenue Officer or Revenue Court under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer or Revenue Court under his control.

"(3) An order under sub-section (1) or sub-section (2) shall not empower any Revenue Officer or Revenue Court to exercise any powers or deal with any business which he or it would not be competent to exercise or deal with within the local limits of his or its own jurisdiction.

"Section 80. Subject to the provisions of this Act and the rules thereunder, an appeal shall lie from an original or appellate order or decree made under this Act by a Revenue Officer or Revenue Court, as follows, namely :

Appeals.

¹ *Chuha v. Asa* (1922), 3 Lahore, 84.

² In the North-West Frontier Province read "Revenue Commissioner": Reg. VII of 1901, s. 6 (1) (e).

³ This sub-section is repealed in the North-West Frontier Province Regulation VII of 1901, s. 8.

⁴ In the North-West Frontier Province the words "subject to the control of the Revenue" are substituted for these words: *Ibid.*

⁵ In the North-West Frontier Province read "Revenue Commissioner": Reg. VII of 1901, s. 6 (1) (b).

- (a) to the Collector when the order or decree is made by an Assistant Collector of either grade ;
- (b) to the Commissioner when the order or decree is made by a Collector ;
- (c) to the Financial Commissioner when the order or decree is made by a Commissioner :¹

Provided that—

- (i) an appeal from an order or decree made by an Assistant Collector of the first grade specially empowered by name in that behalf by the Local Government² in a suit mentioned in the first group of sub-section (3) of section 77 shall lie to the Commissioner³ and not to the Collector ;
- (ii) when an original order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner³ on further appeal, if any, to to him shall be final.
- (iii) when any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner³ on further appeal, if any, shall be final."

As to review by a Revenue Officer, see section 82.

Review by
Revenue
Officers.

Power to call
for, examine
and revise
proceedings
of Revenue
Officers and
Revenue
Courts.

"An appeal shall not lie from an order refusing to review, or confirming on review, a previous order."⁴

"Section 84.—(1) The Financial Commissioner⁵ may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him.

"(2) A Commissioner⁶ or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court under his control.

"(8) If in any case in which a Commissioner or Collector

¹ Cl. (c) was repealed in the North-West Frontier Province by Reg. VII of 1901, s. 8.

² In the North-West Frontier Province read "Chief Commissioner": Reg. VII of 1901, s. 6 (1) (b).

³ In the North-West Frontier Province read "Revenue Commissioner":

Reg. VII of 1901, s. 6 (1) (f).

⁴ S. 82 (5).

⁵ In the North-West Frontier Province read "Revenue Commissioner": Reg. VII of 1901, s. 6 (1) (e).

⁶ In the North-West Frontier Province read "Chief Commissioner": s. 6 (1) (f).

has called for a record he is of opinion that the proceedings taken, or the order or decree made, should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.¹

“(4) If, after examining a record called for by himself under sub-section (1), or submitted to him under sub-section (3), the Financial Commissioner² is of opinion that it is inexpedient to interfere with the proceedings or the order or decree, he shall pass an order accordingly.

“(5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court³ in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a Civil Court, he shall fix a day for hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.”

(6) Except when the Financial Commissioner² fixes under sub-section (5) a day for hearing the case, no party has any right to be heard before the Financial Commissioner when exercising his powers under this section.

“Section 98.—(1) If, in any proceeding pending before a Revenue Court exercising original, appellate, or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with the previous sanction of the Court, if any, to the control of which it is immediately subject, require, by order in writing, any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court for the purpose of obtaining a decision on the question, and, if he fails to comply with the requisition, may decide the question as it thinks fit.

“(2) If the party institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding pending before it in accordance with the final decision

¹ S. 82 (5).

² In the North-West Frontier Province read “Revenue Commissioner”; Reg. VII of 1901, s. 6 (1) (e) (f).

³ In the North-West Frontier Province read “Judicial Commissioner”; *ibid.* s. 6 (1) (c).

Power to refer party to Civil Court.

of the Civil Court of first instance or appeal, as the case may be.

Power to refer to High Court questions as to jurisdiction.

"Section 99.—(1) If the presiding officer of a Civil or Revenue Court in which a suit has been instituted doubts whether he is precluded from taking cognizance of the suit, he may refer the matter through the District¹ Judge or Commissioner,² or, if he is a District Judge or Commissioner, directly to the High Court.³

"(2) On any such reference being made, the High Court may order the presiding officer either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit.

"(3) The order of the High Court on any such reference shall be conclusive as against persons who are not parties to the suit as well as against persons who are parties thereto.

Power of High Court to validate proceedings had under mistake as to jurisdiction.

"Section 100.—(1) In either of the following cases, namely :

(a) If it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in section 77 which under the provisions of that section should have been heard and determined by a Revenue Court, or

(b) if it appears to a Revenue Court that a Court under its control has determined a suit which should have been heard by a Civil Court,

the Civil Court or Revenue Court, as the case may be, shall submit the record of the suit to the High Court.⁴

"(2) If on perusal of the record it appears to the High Court that the suit was so determined in good faith, and that the parties have not been prejudiced by the mistake as to jurisdiction, the High Court may order that the decree be registered in the Court which had jurisdiction.

"(3) If it appears to the High⁵ Court,⁶ otherwise than on submission of a record under sub-section (1), that a Civil Court under its control has determined a suit of a class

¹ Punj. Act VI of 1918, s. 49 (b).

² In the North-West Frontier Province read "Revenue Commissioner": Reg. VII of 1901, s. 6 (1) (e), (f).

³ Punj. Act IV of 1919, s. 2. In the North-West Frontier Province read "Judicial Commissioner": Reg.

VII of 1901, sec. 6 (1) (c).

⁴ Act XVIII of 1919.

⁵ *Ibid.*

⁶ In the North-West Frontier Province read "Judicial Commissioner": Reg. VII of 1901, s. 6 (1) (c).

mentioned in section 77, which under the provisions of that section should have been heard and determined by a Revenue Court, the High Court may pass any order which it might have passed if the record had been submitted to it under that sub-section.

“(4) With respect to any proceeding subsequent to decree, the High Court may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper.

“(5) An order of the High Court under this section shall be conclusive as against persons who were not parties to the suit or proceeding as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order has required it to be registered.

“Section 101.—(1) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed. Place of sitting.

“(2) Any other Revenue Officer or Revenue Court may only exercise his or its powers under this Act within the local limits of his or its jurisdiction.”

“Section 103. When a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district under any orders which may be generally or specially issued by the Local Government in this behalf shall be deemed to be a Collector under this Act. Discharge of duties of Collector dying or being disabled.

“Section 104. When a Revenue Officer of any class who, either as such or as a Revenue Court, has under the foregoing provisions of this Act any powers to be exercised in any local area is transferred from that local area to another as a Revenue Officer or Revenue Court of the same or a higher class, he shall continue to exercise those powers in that other local area, unless the Local Government otherwise directs or has otherwise directed. Retention of powers by Revenue Officers on transfer.

“Section 105.—(1) The Local Government¹ may by notification confer on any person— Conferment of powers of Revenue officer or Revenue Court.

(a) all or any of the powers of a Financial Commissioner,² Commissioner,² or Collector under this Act, or

¹ In the North-West Frontier Province read “Chief Commissioner”: Reg. VII of 1901, s. 6 (1) (b).

² In the North-West Frontier Province read “Revenue Commissioner”: *ibid.* s. 6 (1) (e), (f).

(b) all or any of the powers with which an Assistant Collector of either grade is, or may be, invested thereunder,

and may by notification withdraw any powers so conferred.

“(2) A person on whom powers are conferred under sub-section (1) shall exercise those powers within such local limits and in such classes of cases as the Local Government may direct, and, except as otherwise directed by the Local Government,¹ shall for all purposes connected with the exercise thereof be deemed a Financial Commissioner,² Commissioner,² Collector or Assistant Collector, as the case may be.

“(8) Before conferring powers on the Judge of a Civil Court under sub-section (1), the Local Government¹ shall consult the High Court.³

“(4) If any of the powers of a Collector under section 78, section 79, section 80, or section 82 are conferred on an Assistant Collector, they shall, unless the Local Government¹ by special order otherwise directs, be exercised by him subject to the control of the Collector.”

Santhal Parganas.

The Santhal Parganas Rent Regulation, 1886,⁴ provides that rents within the Santhal Parganas shall not be changed except by the Settlement Officer in the course of settlement proceedings under the Santhal Parganas Settlement Regulation⁵ or by the Deputy Commissioner in accordance with the procedure prescribed in this Regulation.⁶

Appeals.

By section 26 appeals from certain orders of the Deputy Commissioner and of the Settlement Officer lie—

- (a) when the officer making the order is a person invested by the Governor with the powers of a Deputy Commissioner for all or any of the purposes of this Regulation—to the Deputy Commissioner of the Santhal Parganas;
- (b) when the Deputy Commissioner making the order is the Deputy Commissioner of the Santhal Parganas,

¹ In the North-West Frontier Province read “Chief Commissioner”: Reg. VII of 1901, s. 6 (1) (b).

² In the North-West Frontier Province read “Revenue Commissioner”:

ibid., s. 6 (1) (e), (f).

³ Act XVIII of 1919.

⁴ Reg. II of 1886.

⁵ Reg. III of 1872.

⁶ Reg. II of 1886, s. 3.

or the order is made by a Settlement Officer—to the Commissioner of the Bhaghalpur Division.

By section 27 all proceedings of the Deputy Commissioner, *Revision.* Settlement Officer, or Commissioner under this Regulation are subject to control, revision and alteration by the Governor in Council.

CHAPTER LVIII.

LAND REVENUE.

As to the interference by the Civil Courts with the action of the Revenue Courts, see *ante*, p. 300.

In some cases with relation to the liability for Land Revenue, or incidental to its collection the Civil Courts have jurisdiction, provision being made in the several Land Revenue Acts for that purpose. Powers of Civil Courts are also in some cases given to Revenue authorities.

Questions of title.

It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts.¹

As to a suit for declaration of right to be registered, see *post*, p. 624.

Restriction or jurisdiction.

The jurisdiction of the Civil Courts in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public Revenue.²

Civil Courts have jurisdiction to inquire into the title of lands enfranchised by the Inam Commissioner.³

Ajmere.

Partition of land.

The Ajmere Land and Revenue Regulation, 1877,⁴ provides for the partition of land by a Revenue Officer.

¹ *Jugut Shobhun Chunder v. Binaud Chunder* (1888), 9 Calc., 925. Cf. *Bhaga v. Dorabji* (1920), 45 Bom. 67; 22 Bom. L. R., 1111; *Beejoy Keot v. Gorla Keot* (1881), 7 Calc., 437; 9 C. L. R., 218; *Kalindri Dabia v. Komola Kanto Surma* (1880), 7 Calc., 439, note; *Hootaboo Ravah v. Loom Ravah* (1880), 7 Calc., 440, note; 7 C. L. R., 221; *Omrinissa*

Bibee v. Dilawar Ally Khan (1884), 10 Calc., 350; *Bhup v. Ram Lal* (1911), 33 All., 795.

² *Zahrun v. Gowri Sunkar* (1887), 15 Calc., 198.

³ *Cherukuri Venkanna v. Mantravathi Lakshmi* (1865), 2 Mad., H. C., 327. See *Vissappa v. Ramajogi* (1865), *ibid.*, 341.

⁴ Reg. II of 1877, ss. 8-19.

If there be an objection that the applicant is not entitled to the share claimed such officer must stay the proceedings to admit of a suit being filed in a Civil Court to try such objection.¹

On such suit being instituted the Revenue Officer shall, with reference to such objection, be guided by the orders passed by the Court in such suit.²

By section 24, succession to an *istimrari* estate,³ i.e. an Succession to *istimrari* estate. estate in respect of which an *istimrari* sanud has been granted, before the passing of this Regulation by the Chief Commissioner with the previous sanction of the Governor-General in Council, where there are no sons or male issue,⁴ is to be decided by the Governor-General in Council, or by such officer as he may appoint in this behalf:

"Provided that the Governor-General in Council, if he thinks fit, instead of deciding such question himself or appointing any officer to decide the same, may grant to any person claiming to succeed a certificate declaring that the matter is one proper to be determined by a Civil Court."

A Civil Court having jurisdiction otherwise can then entertain such suit.⁵

"Section 25. All claims for maintenance or to hold land Claims for maintenance against *istimraridar*. in lieu of maintenance against an *istimraridar* by any member of his family shall be preferred through the Chief Commissioner, whose decision thereon is conclusive."

As to the acquisition of land situate in an *istimrari* estate for public purposes, see section 26, and *ante*, p. 517.

By section 34, a question as to the succession to land in "*Bhum*." respect of which a *bhum*⁶ *sanad* has been granted, and where there is no male issue, is to be decided by the Governor-General in Council, or by such officer as he may appoint in this behalf:

Provided that he may grant to a claimant a certificate declaring that the matter is one proper to be determined by a Civil Court.

"Section 35. All claims for maintenance, or to hold land Maintenance. in lieu of maintenance, against a *bhumia* by any member of

¹ Reg. II. of 1877, s. 12.

² S. 18.

³ S. 20.

⁴ S. 23.

⁵ S. 24.

⁶ Lit. "land"—Wilson's Glossary, p. 82.

his family shall be preferred through the Commissioner to the Chief Commissioner, whose decision is conclusive."

Settlement-
record.

"Section 67. Any person who considers himself aggrieved by an entry in the settlement record may appeal to the authorities to whom an appeal lies under this Regulation,¹ or when the entry is one in the first (a pedigree table showing all owners of land in such estate), third (a statement of the owners of the fields shown in the map), fourth (a statement of the occupiers of such fields, and of the status of such occupiers), or seventh (a record of any customs prevailing in such estate) document mentioned in section 65, may, instead of so appealing, or, if he prefers an appeal and is dissatisfied with the order passed thereon by any such authority, bring a suit in the Civil Court against any other persons interested in such entry to have such entry amended."

Validity of
orders.

"Section 119. Except as hereinbefore expressly provided :

(a) everything done, ordered or decided by the Governor-General in Council, the Chief Commissioner or a Revenue Officer under this Regulation, shall be deemed to have been legally and rightly done, ordered, or decided ;

Limitation of
jurisdiction of
Civil Courts.

(b) no Civil Court shall entertain any suit or application instituted or presented with a view to obtaining any order or decision which the Governor-General in Council, the Chief Commissioner or a Revenue Officer is under this Regulation enforced to make or pronounce."

Assam.

The Assam Land and Revenue Regulation, 1886,² contains the following :

Resumption.

A suit lies in the Civil Court to set aside the Chief Commissioner's order directing resumption.³

Registration.

Registration under chapter v of the Regulation does not preclude any person from bringing a suit in the Civil Court for possession of, or from declaration of his right to, any immovable property to which he may deem himself entitled.⁴

¹ Reg. II. of 1877, s. 114.

² Reg. I of 1886.

³ S. 46.

⁴ S. 62. *Askar Mian v. Sabad Ali* (1915), 23 C. W. N., 540.

An application for perfect partition¹ should be made to the Deputy Commissioner.² Perfect partition.

If an objection to an application for perfect partition¹ of a revenue-paying estate raises any question of title which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner shall stay his proceedings to allow a suit to be brought.³ He may stay proceedings in the case of other objections.⁴

The Revenue Court has jurisdiction under this Regulation to effect partition of an estate even when the lands of that estate, in whole or in part, are joint with the land of other estates.⁵

“Section 154.—(1) Except when otherwise provided in this Regulation no Civil Court shall exercise jurisdiction in the following matters :

- (a) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force ;
- (b) questions as to the amount of revenue, tax, cess or rate to be assessed and the mode or principle of assessment ;
- (c) the formation of the record of rights, or the preparation, signing or alteration of any document contained therein ;
- (d) claims of persons to perfect partition ;
- (e) claims of persons to imperfect partition,⁶ except in cases in which a perfect partition could not be claimed from, and has been refused by, the Revenue authorities on the ground that the result of such partition would be to form a separate estate liable to an annual amount of revenue less than five rupees ;
- (f) the distribution of the land or allotment of the revenue on partition ;⁷
- (g) claims connected with, or arising out of, the collection

¹ I.e. the division of a revenue-paying estate into two or more such estates, each separately liable for the revenue assessed thereon : s. 96.

² S. 98.

³ S. 100.

⁴ S. 101.

⁵ *Yasin Ali Mirza v. Radhagobinda*

Chaudhuri (1919), 47 Cal., 354 ; *Brojendra Kishore Roy Chowdhury v. Kali Kumar Chowdhury* (1918), 46 Cal., 286.

⁶ *Post*, p. 620.

⁷ See *Habiram Das v. Hem Nath Sarma* (1915), 19 C. W. N., 1068.

of land-revenue or of any sum which is by this Regulation, or by any other enactment for the time being in force, realisable as an arrear of land revenue;

- (h) claims to occupy or resort to lands under sections 13 and 14 and disputes as to the use and enjoyment of such lands between persons permitted to occupy or resort to the same;
- (i) claims to have an allotment made under section 13 or section 14 and objections to the making of such allotment;
- (j) claims to a remission or refund of any revenue, cess, tax, rate, fee, or fine payable or paid under this Regulation, or leviable under any enactment for the time being in force as an arrear of land revenue;
- (k) claims to set aside a decision passed in accordance with an award of arbitrators;
- (l) claims to any office connected with the revenue administration or to any emolument appertaining to such office, or in respect of any injury caused by exclusion, suspension or removal therefrom; and
- (m) any matter respecting which an order expressly declared by this Regulation to be final, subject to the provisions of section 151 of the Regulation has been passed.

“(2) In all the above cases jurisdiction rests with the Revenue authorities only.”¹

The Civil Court may declare a right to a settlement although it may not be able to make a decree for possession.²

“(3) A Civil Court may in the case of a claim for an imperfect partition³ to which its jurisdiction is not barred by this section exercise the same powers in making the partition of a revenue-paying estate as it is competent to exercise in making the partition of a revenue-free estate.”⁴

¹ S. 154 (2). See *Madhub Nath Surma v. Myarani Medhi* (1890), 17 Calc., 819; *Patan Maria v. Bhabiram Dutt Barna* (1896), 24 Calc., 289; 1 C. W. N., 94; *Joy Gobinda Hajam v. Hasira Bibi (Musst)* (1919), 24 C. W. N., 149.

² *Madhub Nath Surma v. Myarani*

Medhi (1890), 17 Calc., 819; *Afsul Hossain v. Umda Bibi (Mussummat)* (1895), 1 C. W. N. 98.

³ I.e. the division of a revenue-paying estate into two or more portions jointly liable for the revenue assessed on the entire estate; s. 96.

⁴ S. 154 (3).

Bengal.

The Bengal Patwaris' Regulation¹ prohibits any suit by a Patwaris in Bengal. patwari (village accountant) against the landholder, or the tenants of a village, for refusing to remunerate his labours, or against a Collector for, or on account of, any decision passed by him under that Regulation.

The Bengal Land-revenue Assessment (Resumed Lands) Assessment of revenue. Regulation, 1819,² which is in force throughout the former Province of Bengal, except the Scheduled Districts, contains the following :

"Section 21.—(3) If the Board of Revenue or other authority pronounce against the assessment, the proceedings shall be considered final, except on proof in a Court of Judicature of fraud or collusion in the previous inquiry.

"Section 24. Persons whose lands may be assessed, either Suit to set aside order. in failure to give security or to institute a suit within the prescribed time, shall nevertheless be entitled to sue any time within one year from the date of their being informed of the Board's decision; but after the above period the decision of the Board shall be final and conclusive."

"Section 26. In cases instituted in the District Court an Appeal. appeal shall be received by the High Court."³

By the Bengal Land Revenue Settlement Regulation, 1822 Land Revenue Settlement. (VII of 1822), which applies to the Pargana of Pitaspur, and its dependencies, to settlements made under the Bengal Alluvial Land Settlement Act, 1858,⁴ and to estates in any part of which a measurement, survey, or local inquiry is made under the Bengal Land Revenue Sales Act, 1859,⁵ and to estates purchased or taken on account of Government under that Act, power is given to Collectors to take cognizance of claims to property in any estate under settlement, subject to a suit in a Civil Court.⁶

By section 14 a suit may be brought to try a right as to Extent of interest and right to possession. the interest possessed by the occupant, or as to the right of possession, but the Courts cannot interfere with the decision of the Collector in regard to the amount or proportion of *jama* to be assessed on any parcel of land, or in respect to the

¹ Ben. Reg. XII of 1817, s. 34. As to his remedy, see ss. 20, 35.

² Ben. Reg. II of 1819.

³ See Ben. Regs. XIV of 1825, s. 6, and III of 1828, s. 10 (3)–(6).

⁴ Act XXXI of 1858.

⁵ Act XI of 1859.

⁶ Ben. Reg. VII of 1822, ss. 12, 14, 16, 18, 30.

quantity and description of land to be assigned in partition to the holder of any specified share of a joint estate.

The Collector has power to restore a person who has been violently or wrongfully dispossessed or distrained, or to decide a question of possession. The opposite party may bring a suit in Court to try the question of right.¹

Settlement of resumed mahal.

In the settlement of a resumed mahal the Collector may take cognizance of claims to property thereon and may give possession to one of the parties, leaving the other claimants to establish their claims in a Civil Court.² Special authority to do this may be given by the Governor-General in Council.³

Collectors and other officers engaged in making or revising a settlement may determine claims to property in lands held lakhiraj, or at a mokurrari jama, and may conclude a settlement with the claimants on behalf of the lakhirajdar or mukurraridar. The Collector may also fix the malikana. A dissatisfied party may contest the decision by a suit in a Civil Court.⁴

Collector judge of jurisdiction.

The Collector is in cases of doubt the judge of the question of jurisdiction, subject to the orders of the Board and of Government, and the Civil Courts cannot disturb possession given by the Collector, except on a regular suit, and on a decision as to the right.⁵

As to suits to contest a Collector's decision under this Regulation, see section 23 (2).

By section 30 of Bengal Regulation VII of 1822 persons having claims cognizable by Collectors, and not wishing a summary process, may in the first instance bring a regular suit.

By section 34 the Collector may decide on a question of right and give possession to one of the parties, leaving the other to contest the decision by suit.

Land Revenue Sales.

The Bengal Revenue Sales Act, 1859,⁶ which was declared by the Laws Local Extent Act, 1874,⁷ to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts, contains the following:

Jurisdiction of Civil Courts in suits to annul sales.

"Section 93. No sale for arrears of Revenue or other demands realisable in the same manner as arrears of Revenue

¹ Ben. Reg. VII of 1822, s. 14.

² S. 15.

³ S. 16.

⁴ S. 17.

⁵ S. 18.

⁶ Act XI of 1859.

⁷ Act XV. of 1874.

are realisable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such shall have been declared and specified in an appeal made to the Commissioner under section 2 of the Bengal Land Revenue Sales Act, 1868; ¹ and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged."

As to a benami purchase, see section 36 of the Act.

"Section 47. No Civil Court shall be competent to order the Revenue authorities to enter any tenure or farm in the special register. ^{Entry in the special register.} Provided always that the refusal of the Revenue authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

"Section 48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm, ^{Registry of a tenure or farm.} may file a suit for the cancelment of the same."

By the Land Registration Act, 1876,² which provides for the registration of Revenue-paying and Revenue-free lands and of the proprietors and managers thereof, and applies to the whole of the former Province of Bengal, if there be a dispute as to the applicant's possession of, succession to, or acquisition by transfer of, the extent of the interest in respect of which he has applied to be registered, and if in the opinion of the ^{Land Registration Act.}

¹ Ben. Act VII of 1868; Act I of 1903, Sch. II. Whether the Commissioner adjudicated on such objection or not: *Balkishen Das v. Simpson*

(1898), 25 I. A., 151; 25 Calo., 833;
2 C. W. N., 513.

² Ben. Act VII of 1876.

Collector the dispute be one which can more properly be determined by a Civil Court, the Collector shall refer the matter in dispute to the principal Civil Court of the District for determination as provided in the Act.¹

Procedure on receipt of reference.

“Section 59. On receipt of such reference the said principal Civil Court of the district may either proceed to determine the matter, or may transfer the matter for determination to any other competent Civil Court² in the district. The said principal Civil Court, or the Court to which the matter is transferred, shall cite the parties concerned, and give notice of the time at which the matter will be heard; and after expiration of the time so fixed, shall determine summarily the right to possession³ in respect of the interest in dispute (subject to regular suit), and shall deliver possession accordingly.”

Summary decision of Court to be final.

“Section 62. The summary decision of the Court under section fifty-nine shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.”

The decision of the Court is subject to revision by the High Court.⁴

It is the duty of the Civil Court in suits brought for declaration of a right to registration to declare the rights of the parties in order that the Revenue authorities may be duly certified as to the persons whom they ought to register.⁵

There is, it is submitted, a right to sue in the Civil Court for such declaration, whether or not there be a reference to a Civil Court under the above Act.

The Civil Courts have no jurisdiction to make a decree reversing an order for the registration of the name of any person made by a registering officer under this Act.⁶

Estates partition.

The Estates Partition Act, 1897,⁷ which applies to the territories which were at the time of the Act under the

¹ S. 55, as amended by Ben. Act V of 1878, s. 1: *Ali Zamin (Syed) v. Muhammad Akbar Ali (Nawab Syed)* (1921), 1 Pat., 68.

² I.e. competent pecuniary and territorial jurisdiction: *Rameshwar Singh v. Raghunath Singh* (1908), 35 Cal., 571.

³ *Omrinissa Bibee v. Dilwar Ally Khan* (1884), 10 Cal., 350.

⁴ *Umatul Mehdi v. Kulsum* (1907), 35 Cal., 120; 12 O. W. N., 16; *Rameshwar Singh v. Raghunath Singh* (1908), 35 Cal., 571.

⁵ *Jugut Shobun Chunder v. Binaud Chunder* (1883), 9 Cal., 925.

⁶ *Omrinissa Bibee v. Dilwar Ally Khan* (1884), 10 Cal., 350.

⁷ Ben. Act V. of 1897.

administration of the Lieutenant-Governor of Bengal,¹ except the Chittagong Hill Tracts,² contains the following :

"Section 25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has—

Effect of suit on proceedings for partition.

(a) made a direction under clause (a)³ or clause (b)⁴ of section 23, or

(b) recorded a proceeding under section 29, by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceeding which may have been taken under this Act for the partition of the estate."⁵

Sections 26 and 27 require every decree of a Civil Court while partition proceedings are in progress or have been completed to be made in recognition of the partition proceedings.

Decree to conform to partition proceedings.

"Section 28.—(1) A Civil Court may at any time direct the Collector upon an application being made to him in accordance with sections 17, 18, and 19—

Civil Court's power to direct partition.

(a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate ; or

(b) to divide off from any estate any specified land or village, and to assign it or them to any person to be held as a separate estate :

"Provided that no Civil Court shall in any such case—

(1) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or

(2) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act."

As to the power of the Civil Court to order the payment by parties of Costs. the cost of partition, see section 48.

Chapters viii and ix of the Act deal with the making of partitions by the Deputy Collector and approval thereof by the Collector.

As to appeals to the Commissioner, see sections 111, 112.

As to appeals to the Board of Revenue, and as to revision by that Board, see sections 114, 115.

¹ Ben. Act V of 1897, s. 1 (2).

² Reg. I of 1900.

³ Direction that partition proceedings proceed.

T. C.J.I.

⁴ Direction that partition proceedings be postponed for four months

⁵ See *Munno Chaudhry v. Munshi Chaudhry* (1917), 2 Pat. L. J., 188.

“Section 119. No order—

(a) refusing to admit an application for partition, or to carry out a partition on the grounds :

- (i) that the annual amount of land revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees ; or
- (ii) that after separation of the applicant's interest the annual amount of land revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees ; or
- (iii) that the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land revenue which would be separately charged upon it ;¹

(b) rejecting or returning for amendment an application for partition on the ground that it is not in order,² admitting or rejecting a subsequent application for the separation of another share,³ or to the making of partitions by a Deputy Collector, and the approval thereof by the Collector,⁴ under chapter ix of the Act, which deals with general principles for making partitions, chapter x. (procedure before the Commissioner up to the completion of a partition), ordering the payment of a fine in case of non-compliance with a requisition,⁵ or as costs of an appeal.⁶

shall be liable to be contested or set aside by suit in any Court, or by any means other than that expressly provided in the Act.

“ Provided that—

- (i) any person claiming a greater interest in lands which were held in common tenancy between the proprietors of two or more estates than has been allotted to him by an order under section 84 or section 86 of the Act ; or
- (ii) any person who is aggrieved by an order made under section 88, which provides for the case of a dispute or doubt existing as to whether any land forms part

¹ S. 11.

² S. 20.

³ S. 30.

⁴ Chap. viii.

⁵ S. 107.

⁶ S. 117.

of a parent estate, may bring a suit in a Court of competent jurisdiction to modify or set aside such order."

These provisions do not prevent a suit for a declaration as to an alleged tenancy although the Collector had decided the question.¹

As to a partition of rent-free land, see *Jitabandhun Singh v. Sudha Kuer (Must)* (1921), 6 Pat. L. J., 689; [1921 Pat.], 342.

By the Bengal Public Demands Recovery Act, 1913, a suit does not lie against a certified purchaser on the ground that the purchase was made on behalf of the plaintiff.² Public Demands Recovery.

That Act also contains provisions for a suit in a Civil Court to have a certificate by the Collector that public demands are due cancelled or modified,³ or to receive possession of, or to set aside a sale of, immovable property, when notice of the certificate has not been served.⁴

Except in those cases every question arising between the certificate holder⁵ and the certificate debtor,⁶ or their representatives, relating to the making, execution, discharge or a satisfaction of a certificate duly filed under the Act, or relating to the confirmation or setting aside by an order under the Act of a sale held in execution of such certificate shall be determined not by suit, but by order of the Certificate officer⁷ before whom such question arises, or of such other Certificate officer as he may determine : Bar to jurisdiction.

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.⁸

Calcutta.

By the Calcutta Land-Revenue Act, 1850,⁹ the High Court has not any civil jurisdiction concerning ground rents payable to the Government for lands in Calcutta, or concerning anything ordered or done in the assessment or collection thereof.¹⁰ Bar of jurisdiction of High Court.

As to the power of the Collector to levy unpaid assessments, see section 8 of the Act.

¹ *Lakhi Choudhry v. Akloo Jha* (1911), 16 C. W. N., 699.

² Ben. Act III of 1913, s. 21.

³ *Ibid.* ss. 34, 35.

⁴ *Ibid.* s. 36.

⁵ Def. s. 3 (2).

⁶ Def. s. 3 (1).

⁷ Def. s. 3 (3).

⁸ Ben. Act III of 1913, s. 37. As to a sale for an imaginary arrear, see *Dhorendra Krishna Mukherjee v. Mohendra Nath Mukherjee* (1922), 27 C. W. N. 386.

⁹ Act XXIII of 1850.

¹⁰ S. 12.

Court of the 24
Parganas.

All actions concerning any trespass or injury committed by any revenue officer acting under colour of that Act, or concerning any claim in respect of any goods taken by, or any moneys paid to, any revenue officer under the Act, or concerning any claim of rent or revenue on the part of Government under the Act, shall be tried and determined in the Civil Courts established at the Sadr station of the Twenty-four Parganas, notwithstanding that the cause of action in which such action arose, or the defendant therein resides, within the limits of the town of Calcutta.¹

Sambalpur.

In Sambalpur an appeal from a decree or order passed by the Deputy Commissioner, deciding the rights of parties or objections to partition raising questions of title, lies to the District Judge.²

Bihar and Orissa.

The Bihar and Orissa Public Demands Recovery Act, 1914,³ which provides a procedure for the recovery of public demands by means of a certificate that the amount is due, contains, amongst others, the following provisions:

Saving of
suits to
establish right
to attached
property.

“Section 25. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order shall be conclusive.”

Suit against
purchaser on
ground that
purchase on
behalf of
plaintiff.

“Section 27.—(1) No suit shall be maintained against any person claiming title under a purchase certified by the Certificate Officer in such manner as may be prescribed, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

“(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser, certified as aforesaid, was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though

¹ Act XXIII of 1850, s. 18.

(1911), 38 Calc., 891; See *ante*, p. 616.

² Ben. Act IV of 1906, s. 3;

³ B. & O. Act IV of 1914.

ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner."

"Section 37. Any person, not being a certificate-debtor, Orders conclusive subject to suit in Civil Court. against whom an order is made under section 36 (claim to be restored to possession) or section 34, sub-section (2) (obstruction by person claiming to be in possession), may institute a suit in a Civil Court to establish the right which he claims to the present possession of the property; but subject to the result of such suit (if any) the order is conclusive."

By section 43 a suit is permissible in a Civil Court to have Cancellation or modification of certificate by Civil Court. a certificate cancelled or modified.

"Section 44.—(1) No certificate duly filed under this Act shall be cancelled by a Civil Court except on one of the following grounds, namely:

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;
- (b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder;
- or
- (c) that, in the case of fines imposed or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defeat or irregularity in such proceedings.

"(2) No certificate duly filed under that Act can be modified by a Civil Court, except on one of the following grounds, namely:

- (i) that a portion of the alleged debt was not due; or
- (ii) that the certificate-holder has not received credit for any portion which he has paid.

"Section 45. Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the required notice has not been served; but a suit may be brought in a Civil Court to recover possession of such property Absence of service of notice.

or to set aside such sale on the ground that such notice has not been served :

“ Provided that no such suit shall be entertained :

(a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser ; or

(b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate officer under section 28 to set aside the sale.

Bar to
jurisdiction of
Civil Courts.

“ Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge, or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of that certificate, shall be determined, not by suit, but by order of the Certificate Officer, before whom such question arises, or of such other Certificate Officer as he may determine :

“ Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.”

Santhal Parganas.

Suits to
contest Settlement
officer's
decision.

By section 25A of the Santhal Parganas Settlement Regulation, 1872,¹ as inserted by section 9 of Regulation III of 1908, where only the rights of zamindars and other proprietors as between themselves are concerned, a suit may be brought in a Court established under the Bengal, Agra and Assam Civil Courts Act, 1887,² to contest the finding or record of the Settlement Officer.

The effect of sections 11, 14, and 25 of Regulation III of 1872 is that the jurisdiction of the Civil Courts is absolutely excluded, except in cases specially provided for in section 25A,³ but where there is fraud there is no such bar.⁴

As to the bar of Civil Courts during settlement, see section 5, as amended by Regulation III of 1908, section 2.

As to the retransfer of suits to Civil Courts, see section 5A inserted by Regulation III of 1908, section 2.

¹ Reg. III of 1872.

(1914), 19 C. W. N., 549.

² Act XII of 1887, *ante*, chap. x.

⁴ *Hare Krishna Sen v. Umesh*

³ *Nemo Deo v. Parbati Kumari Chandru Dutt*, [1921 Pat.], 209.

Bombay.

By section 19 of Bombay Act VII of 1863, which applies to exemptions from land revenue in territories not subject to Act XI of 1852,¹ if the decision of the Collector or trying authority be in favour of the continuance of the exemption or any portion thereof, such exemption shall be admitted in terms of the decision, which shall be final. If the decision be against the right of the claimant to the total or partial exemption claimed, the claimant is at liberty to appeal to the District Court within ninety days from the date of that decision: provided the annual value of the exemption decided against be rupees fifty or upwards.²

Exemption
from land
revenue.

The Bombay Revenue Jurisdiction Act, 1876 (X of 1876) limits the jurisdiction of the Civil Courts in certain Revenue matters.

Bombay
Revenue
jurisdiction.

That Act extends to all the territories for the time being under the Government of the Governor of Bombay in Council, but does not affect:

- (a) any suit regarding the assessment of revenue on land situate in the Collectorate of Bombay or the collection of such revenue;
- (b) any of the provisions of the Bhagdari and Narwardari Tenures Act, 1862,³ the Ahmadabad Taluqdars Act, 1862,⁴ the Broach and Kaira Incumbered Estates Act, 1881,⁵ or the Pensions Act, 1871.⁶

"Section 4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

Bar of certain
suits.

"(a) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act III of 1874,⁷ or any other

¹ Act XI of 1852 applies to territories of the Dekkhan, Khandesh, and Southern Mahratta country and other territories then more recently annexed to the Bombay Presidency.

² As to service watans, see *Government of Bombay v. Damodhar Parmanandas* (1868), 5 Bom. H. C. A. C., 202.

³ Bom. Act V of 1862.

⁴ Bom. Act VI of 1862.

⁵ Act XXI of 1881.

⁶ Act XXIII of 1871, *ante*, p. 811.

⁷ *Damodar Krishna v. Secretary of State* (1919), 44 Bom., 261; 22 Bom. L. R., 99; *Rachungauda v. Secretary of State* (1919), 21 Bom. L. R., 1155; *Maganchand v. Vilhalrav* (1912), 37 Bom., 37; 14 Bom. L. R., 793. See *Savla v. Santya* (1918), 43 Bom., 277; 20 Bom. L. R., 993.

law for the time being in force, or of any other village-officer or servant, or

“claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service,¹ or

“suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorised in that behalf,² or

“claims against Government relating to lands held under treaty,³ or to lands granted or held as *saranjam*,⁴ or on other political tenure, or to lands declared by Government or any officer duly authorised in that behalf to be held for service.

“(b) Objections⁵—

“to the amount or incidence of any assessment of land-revenue⁶ authorised by Government, or

“to the mode of assessment, or to the principle on which such assessment is fixed, or

“to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

“(c) Claims connected with or arising out of any proceedings for the realisation of land-revenue or the rendering of assistance by Government⁷ or any officer duly authorised in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants;⁸

¹ *Naro Pandurang v. Mahadev Purshotam* (1887), 12 Bom., 614; *Vasudev Vithal Samant v. Ramchandra Samant* (1881), 6 Bom., 129.

² See *Savla v. Santya* (1918), 43 Bom., 277; 20 Bom. L. R., 998. An unauthorised order does not bar a suit: *Magan Chand v. Vithalrav* (1912), 87 Bom. 87; 14 Bom. L. R., 793, as for instance when the Collector refused to declare an alienation of vatan property void: *Dattatraya Keshav v. Tukaram Raghu* (1920), 45 Bom., 1141; 23 Bom. L. R., 376. As to a case where there would have been a right of action against the East India Company, see *Damodar v. Secretary of State* (1921), 45 Bom., 1161; 23 Bom. L. R., 492.

³ That is an agreement between

two or more independent Sovereigns or States: *Kalabhai v. Secretary of State* (1904), 29 Bom., 19; 6 Bom. L. R., 648.

⁴ Grant made by the Marathas for military purposes, or to civil officers of the State: *Ramraggovindrao v. Secretary of State* (1909), 34 Bom., 232; 11 Bom. L. R., 1838.

⁵ *Gangadhar Hari Karkare v. Morbhat Purohit* (1893), 18 Bom., 525.

⁶ This includes a water rate: *Balvant v. Secretary of State* (1896), 22 Bom., 377.

⁷ *Mahadu v. Lakshman* (1892), 17 Bom., 681.

⁸ This does not bar a suit arising out of the alleged illegality of proceedings taken for the realisation of land revenue: *Gangaram Hatiram v.*

“claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue.

“(d) Claims against Government—

(1) to be entered in the revenue survey or settlement records or village papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended.

“(e) The distribution of land or allotment of land revenue on partition of any estate under Bombay Act IV of 1868,¹ or any other law for the time being in force.

“(f) Claims against Government :

“to hold land wholly or partially free from payment of land-revenue,² or

“to receive payments charged on or payable out of the land-revenue, or

“to set aside any cess or rate authorised by Government under the provisions of any law for the time being in force, or

“respecting the occupation of waste or vacant land belonging to Government.³

“(g) Claims regarding boundaries fixed under Bombay Act I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks :

“Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

“(h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

“(i) an instrument or sanad given by or by order of the

Dinkar Ganesh (1913), 37 Bom., 542; 15 Bom. L. R., 665. It does not apply to a suit between private parties for the purpose of establishing a private right: *Bhau v. Hari* (1895), 20 Bom., 747.

¹ Now repealed by Bombay Act V

of 1879, Sch. A, in areas in which that Act is in force (*post*, p. 637).

² See *Janardanrao v. Secretary of State* (1889), 13 Bom., 442.

³ *Trimbak Gopal v. Secretary of State* (1896), 21 Bom., 684.

Governor of Bombay in Council under Bombay Act II of 1863, section one, clause first, or Bombay Act VII of 1863, section two, clause first, or

“(j) any other written grant by the British Government expressly creating or confirming such exemption,¹ or

“(k) a judgment by a Court of law, or an adjudication duly passed by a competent officer² under Bombay Regulation XVII of 1827,³ chapter x, or under Act XI of 1852, which declares the particular property in dispute to be exempt,

“Such claim shall be cognizable in the Civil Courts.⁴

Illustrations to (h).

“(1) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary rights in certain lands is transferred to A at an assessment of Rs.100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

“(2) It is enacted that when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs.100 for assessment. He claims to be assessed at Rs.50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

“(3) It is enacted that land-revenue shall not be leviable from any and held and entered in the land registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

“(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

“(5) It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class,

¹ These three clauses are independent of one another: *Kalabhai v. Secretary of State* (1904), 29 Bom., 19; 6 Bom. L. R., 648.

² This includes the Governor in Council: *Janardanray v. Secretary of State* (1889), 18 Bom., 442.

³ Repealed by Bom. Act V of 1879

in areas in which that Act is in force (post, p. 637).

⁴ *Mahamadsaheb v. Secretary of State* (1919), 44 Bom., 120; 21 Bom. L. R., 1159; *Fakarudin Sab v. Secretary of State* (1919), 44 Bom., 130; 21 Bom. L. R., 1166.

and no objection to an assessment under such an enactment is cognizable in a Civil Court."

"Section 5. Nothing in section four shall be held to prevent the Civil Courts from entertaining the following suits :— Saving of certain suits.

"(a) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land revenue on the ground that such amount is in excess of the amount authorised in that behalf by Government, or that such amount had previous to such claim, payment, or recovery been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount ;

"(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement, or in any village papers ;

"(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter ;¹

"and nothing in section four, clause (g), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognised share of a survey number ;

"²and nothing in section four shall be held to prevent the Civil Courts in the districts of Ahmadabad, Kaira, exclusive of the Panch Mahals, Broach, Surat, exclusive of the lapsed state of Mandvi, as described in the schedule annexed to Act X of 1848,³ Tanna, Kolaba, exclusive of the lapsed state of Kolaba mentioned in Act VIII of 1853,³ Ratnagiri and Kanara from exercising such jurisdiction as, according to the terms of any law in force on the 28th of March, 1876, they could have exercised over claims against Government—

(a) relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act III of 1874, or any other law for the time being in force, or of any other village officer or servant ;²

¹ *Narayan v. Sakharani* (1885), 9 Bom., 462.

²⁻³ added by Act XVI of 1877, s. 1. *Kalabhai v. Secretary of State* (1904),

29 Bom., 19 ; 6 Bom. L. R., 648.

³ Acts X of 1848 and VIII of 1853 were repealed by Act XII of 1891.

¹ (b) to hold land wholly or partially free from payment of land revenue ;

(c) to receive payment charged on, or payable out of, the land revenue."¹

No suit unless plaintiff has exhausted right of appeal.

"Section 11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present."²

This does not bar a suit for a declaration that the Government had no right to assess any kind of claim or tax on the land.³

Power of Government to refer questions for the decision of the High Court.

"Section 12. If in the trial or investigation of any suit,⁴ claim, or objection which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor-General in Council or the Local Government desires to have the decision of the High Court, the Governor-General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.⁵

"The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.⁶

Reference of questions of jurisdiction to High Court.

"Section 13. If in any suit instituted, or in any appeal presented, in a Civil Court the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

"The High Court may order the Judge making the reference either to proceed with the case or to return the plaint.

"The order of the High Court on any such reference shall

¹⁻¹ added by Act XVI of 1877, s. 1. *Kalabhai v. Secretary of State* (1904), 29 Bom., 19; 6 Bom. L. R., 648.

² As to such appeals, see sections 8 to 10 of the Act: *Dayal Khushal v. Secretary of State* (1920), 22 Bom. L. R., 1089; *Haribhai v. Secretary of State* (1895), 20 Bom., 764.

³ *Nathuram Hiraram v. Secretary of State* (1921), 46 Bom., 811.

⁴ Whether or not the suit lay

before the passing of this Act: *In re Vasudev Harihar* (1920), 45 Bom., 468; 23 Bom. L. R., 161.

⁵ *In re Vasudev Harihar* (1920), 45 Bom., 468; 23 Bom. L. R., 161. *In re Jagannath Wasudev* (1921), 45 Bom., 1177; 23 Bom. L. R., 189.

⁶ *In re Vasudev Harihar* (1920), 45 Bom., 468; 23 Bom. L. R., 161. *In re Jagannath Wasudev* (1921), 45 Bom., 1177; 23 Bom. L. R., 189.

be subject to appeal to His Majesty in Council, and, save as aforesaid, shall be final.

"Section 14. Every reference under section twelve or section thirteen shall be heard by a Bench consisting of such number of Judges, not less than three, as the Chief Justice from time to time directs."

Composition of Bench.

As to the privilege of Government in suits in which it is concerned, see section 15, *ante*, p. 147.

The Bombay Land Revenue Code, 1879,¹ consolidates the law relating to Revenue Officers and their powers in the Presidency of Bombay, except the scheduled districts and the city of Bombay and the whole of the province of Sindh.

Bombay Land Revenue Code.

The power given to a Collector by section 79A, added to the Act by Bombay Act VI of 1901, to evict a person occupying or wrongfully in possession of land can only be exercised in cases of wrongful possession. The decision of the Collector does not exclude the jurisdiction of the Civil Court.²

Eviction.

Although section 85 of the Bombay Land Revenue Code requires a superior holder to receive his dues on account of rent or land-revenue through an hereditary patel or village accountant, the jurisdiction of a Civil Court to entertain a suit for arrears is not ousted.³

Collection of superior holder's dues.

No suit lies against the Secretary of State or Government or any officer of Government in respect of a claim to have an entry made in any record or register that is maintained under chapter x.A (Record of Rights) of the Bombay Land Revenue Code,⁴ or to have any such entry omitted or amended.⁵

Entry in record.

The fact that the Collector has fixed the boundaries under the Bombay Land Revenue Code, 1879,⁶ does not prevent a suit for possession, or decide rights which one holder has over the⁷ property of another holder.⁸

Boundaries.

¹ Bom. Act V of 1879, amended by Bom. Acts XI of 1912 and IV of 1913.

² *Talukdari Settlement Officer, Gujarat v. Umiashankar Narstram Pandya* (1910), 35 Bom., 72; 12 Bom. L. R., 837.

³ *Vishwanath Ganesh v. Kondaji* (1917), 42 Bom., 49.

⁴ Bom. Act V of 1879.

⁵ Bom. Act IV of 1913, s. 66, inserting s. 185L in Bom. Act V of 1879.

⁶ Bom. Act V of 1879, s. 12.

⁷ *Bhaga v. Dorabji* (1920), 45 Bom., 67; 22 Bom. L. R., 1111.

⁸ *Ganesh v. Ramchandra* (1921), 46 Bom., 390; 23 Bom. L. R., 1209.

Bombay City.

**Jurisdiction of
Revenue
Judge.**

By the Bombay City Land Revenue Act, 1876 (Bombay Act II of 1876), the senior Magistrate of Police is Revenue Judge, and shall decide all suits brought before him against the Collector, or any person on his establishment, on account of land revenue, or of acts done in their official capacities by the Collector or any of his assistants or other subordinates.¹

Appeals.

An appeal lies against a decree passed by a Revenue Judge in any such suit to the High Court on its appellate side, and shall follow the same rules as would be applicable under any law for the time being in force to appeals from the decrees of a District Court in original suits tried by it.²

**Execution of
decree.**

As to the execution of the decree in any such suit or appeal, see section 18 as amended by Bombay Act III of 1886.

Khoti Settlement.

**Determination
of disputes.**

By the Khoti Settlement Act, 1880,³ which makes provision for the settlement or revenue administration of villages in the Ratnagiri district which was held by Khots,⁴ the decision of the Settlement Officer, determining a dispute as to any matter which he is bound to record, can be reversed or modified by a competent Court.⁵

No suit lies against the Survey Officer, or against Government, or any officer of Government to set aside a Survey Officer's determination of disputes.⁶

**Nomination of
managing
Khot.**

No suit lies against the Collector, or against Government, or any Government officer in respect of the nomination of a managing Khot. But any of the shareholders may at any time sue for a decree *inter se* to declare which of them is entitled to the management, or the order in which they should respectively have the management, if more than one of them be entitled to the same.⁷

Lower Burma.

**Definition of
boundaries of
excluded
lands.**

By the Burma Land and Revenue Act, 1876 (II of 1876), which applies to Lower Burma, the Local Government⁸

¹ Bom. Act II of 1876, s. 17.

⁵ S. 21.

² *Ibid.* s. 18.

⁶ S. 22.

³ Bom. Act I of 1880.

⁷ S. 28.

⁴ Khots are hereditary or appointed
lectors of revenue.

⁸ Bur. Act I of 1907, s. 2.

can cause the following land to be defined by the Revenue Officer.¹

“Section 4 :

- (a) land included in any forest constituted ‘a reserved forest’ under the law for the time being in force ;
- (c) the soil of any public road, canal, drain, or embankment ;
- (d) land included within the limits of any town ;
- (e) land appropriated to the dwelling-places of any town or village ;
- (f) land included in any military cantonment ;
- (g) land included in any civil station ;
- (h) land belonging, when the Act came into force, to the site of any monastery, pagoda, or other sacred building, or of any school, and continuing to be used for the purposes of such monastery, pagoda, building or school.

“If before they are defined, any question arises as to whether any land is included within them, such question shall be decided by the Revenue Officer, whose decision, subject to appeal and review as thereafter provided, shall be final.”

As to appeals, see section 55 of Act II of 1876.

As to fisheries in Burma, see *ante*, pp. 177, 178.

As to a suit to establish title to land by a person claiming to be a successor in interest of a person applying for possession of land under section 3, see section 14 of the Act. Successor of applicant for possession.

As to how questions as to original acquisition or as to loss of landholder's status are to be dealt with by the Civil Courts, see section 17 of the Act. Landholder's status.

As to appeals from orders, see section 55 of the Act.

Appeals.

By section 56 of the Act the Civil Courts cannot exercise jurisdiction in any of the following matters (namely) :

Bar to jurisdiction Civil Courts

- (a) matters, claims, and questions mentioned in the first proviso to section 55.²
- (b) claims to any office connected with the revenue administration, or to any emolument appertaining to such office, or in respect of any injury caused by exclusion, suspension, or removal therefrom ;

¹ Bur. Act II of 1876, s. 5.

² These are revenue questions.

- (c) claims to have allotments made under section 20 or section 21 and objections to the making of such allotments ;
- (d) claims to a remission or refund of any revenue, tax,¹ rate, fee, duty, or composition payable or paid under the Act ;
- (e) questions as to the right to, or amount of, any compensation for improvements awardable under section 13 of the Act.

Burma towns
and villages.

By the Lower Burma Town and Village Act, 1898,² no Civil Court has jurisdiction to determine any matter which under that Act is to be determined by a Revenue Officer.

Section 41 (6) of that Act, which enacts that no Civil Court is to have jurisdiction to determine a claim to any right over land as against the Government, is *ultra vires*.³

Upper Burma.

Upper Burma
land and
Revenue.

By section 43 of the Upper Burma Land and Revenue Regulation (III of 1889), although a special procedure is provided for the recovery of revenue, a remedy by suit is given to a person denying that an arrear is due.⁴

The same Act contains the following :—

Bar of
jurisdiction.

“Section 53.—(1) A Civil Court shall not have jurisdiction in any matter which the Local Government or a Revenue Officer is empowered by or under this Regulation to dispose of, or take cognizance of the manner in which the Local Government or any Revenue Officer exercises any powers vested in it or him by or under this Regulation ; and in particular—

“(2) A Civil Court shall not exercise jurisdiction over any of the following matters, which shall be cognizable exclusively by Revenue Officers, namely :

- (i) any question as to the limits of any State land ;
- (ii) any claim to the ownership or possession of any State land or such land free of land revenue or at a favourable rate of land revenue,⁵ or to establish a

¹ Act II of 1880, s. 3.

² Bur. Act IV of 1898 s. 41.

³ *Secretary of State v. Moment* (1912), 40 I. A., 48 ; 40 Cal., 391 ;

17 C. W. N., 169 ; 15 Bom. L. R., 27.

⁴ See ss. 2 and 8.

⁵ Reg. V of 1901, s. 10.

lien upon, or other interest in, such land or the rents, profits, or produce thereof ;”

(These two paragraphs are apparently *ultra vires*.¹)

- “(iii) any claim to compel the performance of any duties imposed by or under this Regulation or any other enactment for the time being in force on any Revenue Officer as such ;
- (v) the preparation of record of rights or periodical edition of such a record ;
- (vi) the correction of any entry in a record of rights or periodical edition of such a record ;
- (vii) the amount of land revenue to be paid in respect of State or other land² under this Regulation ;
- (viii) the amount of, or the liability of any person to pay, any other revenue recoverable under this Regulation ;
- (ix) any claim connected with, or arising out of, any right in an irrigation work, or any charge in respect of land irrigated from such a work, or any matter which the Collector is bound to ascertain and record under section 36 ;
- (x) any claim to a right to fish, or connected with, or arising out of, the demarcation or disposal of any fishing ;
- (xi) any claim to hold free of revenue any land, fishery, or natural products of land or water ;
- (xii) any claim connected with, or arising out of, the collection of revenue or the enforcement of any process for the recovery of an arrear of revenue or any sum recoverable as such an arrear ;
- (xiii) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of revenue or any sum recoverable as such an arrear ;
- (xiv) the amount of, or the liability of any person to pay any fees, costs, or other charges imposed under this Regulation.”

As to claims between private persons relating to any interest in or Wells. the rents, profits or produce of a well or well site, see Regulation VI of 1910, s. 16.

¹ See *Secretary of State v. Mom* C. W. N., 169 ; 15 Bom. L. R., 27. (1912), 40 I. A., 48 ; 40 Calc., 391 ; 17 ² Reg. V of 1901, s. 10.

Central Provinces.

The Central Provinces Land Revenue Act, 1917,¹ contains the following provisions with regard to the jurisdiction of the Civil Courts in matters dealt with by that Act.

If a boundary has been demarcated by the Deputy Commissioner under section 55 (2) of the Act, its correctness as such shall not be called in question by a Civil Court.²

Disputes as to
boundaries.

Any person against whom an order is made by the Deputy Commissioner deciding disputes regarding boundaries between estates, villages, mahals or pattis or placing proprietors thereof in possession or demarcating the boundary, or passing orders regarding the rights of any tenants or persons occupying the land in dispute, may institute a suit to establish the right, title, or interest he claims in the land in dispute and for its possession; but, subject to the result of such suit, if any, the order shall be conclusive.³

Record of
Sir-lands.

Any person aggrieved by an order passed or an entry made determining and recording Sir-land, may institute a suit in the Civil Court to have such order or entry cancelled or amended and, subject to the result of such suit, the order or entry is conclusive.⁴

Questions as to
land revenue.

If any question arises in a Civil Court as to the amount of land revenue payable or the conditions on, or the period for, which any estate, mahal or land may be held free of land revenue, the Court shall, on application made in this behalf, stay the proceedings and refer the questions for the orders of the Settlement Officer and shall make a decision in accordance with such orders.⁵

Suit as to
orders and
entries.

“Section 80.—(1) Any person aggrieved by any order or entry under sections 67 (declaring a person to be a *malik-makbuza* ⁶), 69 (determining and recording *khudkhast* ⁷ land), 70, clauses (a), (b), (c) (record of status of tenants, area of lands, and conditions on which they were held), 71 (deter-

¹ C. P. Act II of 1917.

² S. 55 (2).

³ S. 55 (4).

⁴ S. 68 (5).

⁵ S. 75 (3).

⁶ I.e. a person who owns one or more plots of land separately as-

essed to land revenue in a mahal: s. 2 (9).

⁷ I.e. that part of the home farm of a mahal which is cultivated by the proprietor as such and which is not Sir-land: s. 2 (5).

mination of abadi¹), 76 (as to village cesses), 77 (disputes as to management of estate), 78 (record of customs), or 79 (village administration paper), may institute a suit in the Civil Court, within one year from the date on which the assessment is offered to the proprietor, to have such order or entry cancelled or amended, and, subject to the result of such suit, the order or entry shall be conclusive."

Sections 100 and 101 deal with awards made under settlements made before the Act came into force.

A Civil Court cannot call in question the terms of a lease and kabuliyat given in the case of a protected headman.² Protected headman.

A suit can be instituted in a Civil Court to set aside a sale for the arrears of land-revenue on the ground of fraud or on the ground that the arrear for which the property is sold is not due.³ Fraudulent sale.

In cases where the Deputy Commissioner has ordered the payment of land-revenue at the instance of a sadar lambardar, lambardar, or proprietor, a person affected by the order can institute a suit in a Civil Court to establish the right which he claims.⁴ Order for recovery of revenue.

An order by the Deputy Commissioner ejecting a person who has encroached upon communal property does not prevent any person establishing his rights in a Civil Court.⁵ Encroachment.

"Section 220. Except as otherwise provided in this Act, or in any other enactment for the time being in force, no Civil Court can entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor-General in Council, the Chief Commissioner or any Revenue Officer is, by the Act, empowered to determine or dispose of; and in particular and without prejudice to the generality of the provision, no Civil Court can exercise jurisdiction on any of the following matters: Bar of jurisdiction.

- (a) any correction or revision of a record of rights under section 46;
- (b) any question regarding the demarcation of boundaries under section 55;
- (c) any matter provided for in sections 63 and 64 as to any land which appears to have no lawful owner;

¹ Populousness, cultivation.

² S. 116 (2).

³ S. 149 (2).

⁴ S. 157.

⁵ S. 219.

- (d) any matter provided for, or referred to, in sections 73, 74, 75 or 108 as to estates, mahals or lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land ;
- (e) the formation of the record of rights ;
- (f) the amount of land revenue to be assessed under this or any other enactment for the time being in force ;
- (g) the claim of any person to have an assessment offered to, or sub-settlement made with, him ;
- (h) any question as to the validity of any engagement with Government for the payment of land revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement ;
- (i) any decision regarding the purpose to which land is appropriated under section 88, proviso (ii) (objection to continuance of assessment beyond term of settlement) ;
- (j) any claim connected with, or arising out of, any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement Officer or by the Deputy Commissioner ;
- (k) the amount of the allowance or sum fixed under section 93 (allowance to excluded proprietors) ;
- (l) any matter relating to thekadar¹ under sections 107 (inquiry into claims of thekadar), 108 (inquiry into and record of, protected thekadar), 111 (forfeiture of protection), 112 (transfer of theka), or 114 (reinstatement and protection of ejected thekadar), or to village headmen under section 115 (protection of village headmen in backward tracts), 116 (lease to protected headmen), 120 (forfeiture of protection of headmen), or 121 (appointment of successor to headman) ;
- (m) any claim against Government connected with, or arising out of, the collection of land-revenue or the recovery of any sum which is realisable as land-revenue under this Act or any other enactment ;

¹ Farmers or middlemen.

- (n) the partition or union of mahals or pattis ;
- (o) the distribution of the land or apportionment of the land revenue or sums payable under a sub-settlement of a mahal or patti by partition or otherwise or the determination of the rent to be paid by a co-sharer for land held by him after the partition in the mahal or the patti of another co-sharer ;
- (p) any claim in connection with the office or the fixation of the remuneration of patwari, sadar-lambardar, lambardar, mukaddam, patil or village watchman, or in respect of any injury caused by the exclusion of any person from such office ;
- (q) any question connected with, or arising out of, the exercise of the powers under section 202 (control and management of forest growth) ;
- (r) any question connected with the allotment of house-sites in an abadi under section 203, sub-section (4) (allotment of sites by proprietor), or the exception of an abadi under section 203, sub-sections (5) (declaration that rights are heritable or transferable), (6) (application of such declaration), and (7) (recovery of nazarana) from the provisions of section 203, sub-sections (1), (2), (3), and (4) (right to house sites in mahal) ; and
- (s) any claim to compel the performance of any duty imposed by this Act on any Revenue Officer.

“Section 221. No suit shall lie in the Civil Court for the recovery of any village cess which has not been recorded under sections 76 or 106, clause (f).” For what village cesses suit lies.

Coorg.

The Coorg Land and Revenue Regulation (I of 1899) contains the following provisions with regard to suits in Civil Courts :

A direction by a Revenue Officer that a person be put into possession of property to which a dispute relates is subject to a decree or order subsequently passed by a Civil Court.¹ Determination of disputes.

Whoever considers himself aggrieved as to any rights of which he is in possession by an entry in a record of rights or in an annual record, may institute a suit against any person Entry in record.

denying, or interested to deny, his title to such suit for a declaration of his right under chapter vi of the Specific Relief Act, 1877 (I of 1877).¹

Fraudulent
transfer.

“Section 76.—(1) Where a defaulter makes a fraudulent transfer of property for the purpose of preventing distraint for an arrear, any Civil Court of competent jurisdiction shall, upon the application of the distrainer and proof of the fraudulent nature of the transfer, cause the property to be delivered up to the distrainer.”

Taking away
distrained
property.

“Section 78.—(1) Where it is proved to the satisfaction of a Civil Court of competent jurisdiction that distrained property has been forcibly or clandestinely taken away, the Court may, upon the application of the distrainer, cause the property to be restored to him.”

Engagements
with tenants.

By section 91 any person aggrieved by a declaration of the Commissioner declaring an engagement between the defaulter and tenants to be void, may institute a suit against the Government to establish the validity of the engagement, and that all charges and incumbrances upon property which has been attached, shall be postponed to the revenue and expenses consequent on the accrual of any arrear thereof.

As to suits brought against the defaulter by tenants for sums which they have been compelled to pay to Government, see section 94.

Bar of civil
suits.

“Section 145. Except as otherwise provided by this Regulation, no suit shall be brought in any Civil Court in respect of any of the following matters, namely :

- (i) the limits of any land which have been defined by a Revenue Officer as land to which the Regulation does or does not apply ;
- (ii) any claim to compel the performance of any duties imposed by this Regulation or by any other enactment for the time being in force on any Revenue Officer as such ;
- (iii) any claim to the office or emoluments of parpatrigar or village-officer, or in respect of any injury caused by exclusion from such office or to compel the performance of the duties or a division of the emoluments thereof ;
- (iv) any notification directing the making a revision of a record of rights ;

- (v) the framing of a record of rights or annual record, or the preparation, signing or attestation of any of the documents included in such a record ;
- (vi) the correction of any entry in a record of rights, annual record, or register of mutations ;
- (vii) any notification of a general assessment having been sanctioned by the Governor-General in Council ;
- (viii) the claim of any person as to liability for an assessment of land-revenue or of any other revenue under this Regulation ;
- (ix) the amount of land-revenue to be assessed under this Regulation ;
- (x) the amount of, or the liability of any person to pay, any other Revenue to be assessed under this Regulation, or any cess, charge or rate to be assessed on any holding under this Regulation or under any other enactment for the time being in force ;
- (xi) any claim to hold free of revenue or at favourable rates, any land, mills, fisheries or natural products of land or water ;
- (xii) any claim connected with, or arising out of, the collection of the land-revenue by the Government or the enforcement by the Government of any process for the recovery thereof ;
- (xiii) any claim to set aside on any ground, other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue ;
- (xiv) the amount of, or the liability of any person to pay, any fees, fines, costs or other charges imposed under this Regulation ;
- (xv)¹ any claim for the partition of an estate or holding or any question as to the allotment of land, when such estate, holding or land is one of which the land revenue has been wholly or partly assigned or released, or which is held as joint family property by persons of the Coorg race, or any claim for the distribution of land-revenue on partition, or any other question connected therewith, not being a

¹ This clause was substituted by Reg. IV of 1907, s. 3.

question as to the partibility of, or the title to, the property of which partition is sought;
 (xvi)¹ any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or reassessing such revenue."

Madras Presidency (except the City of Madras).

Right of
transfer.

The Civil Court has the power to enforce by suit the right of transfer given to proprietors of land by section 8 of the Madras Permanent Settlement Regulation, 1802.²

Inams.

A suit for enfranchised (revenue-free) *inam* lands can be brought in the Civil Court.³

Madras
Revenue
Recovery Act.

By the Madras Revenue Recovery Act, 1864,⁴ no Court of Civil Judicature has authority to take into consideration or decide any question as to rate of land revenue payable to Government, or as to the amount of assessment fixed, or to be hereafter fixed, on the portions of a divided estate.

Nothing contained in that Act prevents parties deeming themselves aggrieved by any proceedings under that Act, except as therein provided, from applying to the Civil Courts for redress: provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action unless such suit be instituted within six months from the time at which the cause of action arose.⁵

City of Madras.

Ground rents.

The High Court of Madras has no civil jurisdiction concerning the ground rents payable to the Government from lands within the local limits of its ordinary original civil jurisdiction⁶ in the city of Madras or concerning anything ordered or done in the assessment or collection thereof.⁷

Suits against
Revenue
Officers.

All actions concerning any trespass or injury committed by any Revenue Officer acting under colour of the Madras

¹ As amended by Reg. IV of 1907, s. 2.

² Mad. Reg. XXV of 1802. *Pon-nusamy Tevar v. Collector of Madura* (1868), 8 Mad. H. C., 35.

³ Act XXIII of 1871, s. 7 (1), *ante*, pp. 812, 818. Mad. Act IV of 1862, s. 1; Mad. Act IV of 1866, s. 1. *Cherukuri Venkanna v. Mantravathi*

Lakshmi (1865), 2 Mad. H. C., 327.

⁴ Mad. Act II of 1864, s. 58.

⁵ *Ibid.* s. 59. The rule of limitation in this section does not apply to orders made without jurisdiction: *Sundaram Ayyangar v. Ramaswamy Ayyangar* (1918), 41 Mad. 955.

⁶ *Ante*, pp. 87, 88.

⁷ Act XII of 1851, s. 16.

City Land Revenue Act, 1851 (XII of 1851), or concerning any claim in respect of any goods taken by, or any monies paid to, any Revenue Officer under that Act, shall be tried and determined in the Civil Courts in the district of Chingleput, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, *Limitation.* within the limits of the town of Madras and every such action shall be brought within six months after the cause of action arose, and not afterwards.¹ •

Malabar.

Every registration purporting to be made in accordance with the procedure prescribed by the Malabar Land Registration Act, 1896,² shall be subject to any decree or order which may be passed by any Civil Court of competent jurisdiction.³ *Malabar land registration.*

Section 14 of that Act empowers a Civil Court of competent jurisdiction to pass a decree directing a joint registration of occupants and proprietors in pursuance of a contract whereby the occupant has undertaken to pay direct to Government the amount of land-revenue assessed on the estate. *Joint registration.*

"Section 16. Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which the Collector is empowered by or under the Act to dispose of or shall take cognizance of the manner in which the Collector exercises any powers vested in him by or under this Act." *Bar of jurisdiction.*

Punjab.

The Punjab Land Revenue Act, 1887,⁴ which applies to the Punjab and the North-West Frontier Province, contains the following provisions. *Entry on record.*

"Section 45. If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record of rights or in an annual record, he may institute a suit for the declaration of his right under chapter vi of the Specific Relief Act, 1877."⁵

"Section 78.—(1) Notwithstanding anything in section 66, when proceedings are taken under this Act for the recovery of an arrear, the person against whom the proceedings are taken *Remedies open to person denying his liability for an arrear.*

¹ *Ibid.* s. 17.

² Mad. Act III of 1896.

³ S. 10.

⁴ Act XVII of 1887.

⁵ Act I of 1877.

may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

“(2) A suit under sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate.”

Suit against
certified
purchaser.

“Section 95.—(4) Any suit brought in any Court against the certified purchaser on the ground that the purchase was made on behalf of a person other than the certified purchaser shall be dismissed with costs.”

Chapter ix of the Act deals with partition.

Questions of
title.

“Section 117.—(1) Where there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

“(2) Where the Revenue Officer himself proceeds to determine the question the following rules shall apply, namely :

- (a) If the question is one over which the Revenue Court has jurisdiction, the Revenue Officer shall proceed as a Revenue Court under the provisions of the Punjab Tenancy Act, 1887.¹
- (b) If the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court.
- (c) An appeal shall lie from the decree of the Revenue Officer under clause (b) as though that decree was a decree of a Subordinate Judge² in an original suit.
- (d) Upon such an appeal being made the District Court² or High Court,³ as the case may be, may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal.
- (e) From the appellate decree of a District Court upon such an appeal a further appeal shall lie to the

¹ Act XVI of 1887, *ante*, pp. 604–614.

² Punj. Act VI of 1918, s. 49 (a):
Sadda Singh v. Kirpala (1920), 1
Lahore, 887; 2 Lahore L. J., 269.

³ Punj. Act IV of 1919, s. 2 (8).
In the North-West Frontier Province
read “Judicial Commissioner”; Reg.
VII of 1901, s. 6 (1), (c).

High Court, if such an appeal is allowed by the law for the time being in force."

As to the disposal of other questions, see section 118.

"Section 136.—(1) The Local Government¹ . . . may invest any Revenue Officer making or specially revising records of rights in any local area in pursuance of a notification under section 32, or making a general re-assessment of land revenue in any local area in pursuance of a notification under section 49 (or any Revenue Officer in a colony),² or any Revenue Officer to whose control that officer is subject with all or any of the powers of any Court constituted under the Punjab Courts Act, 1884,³ for the purpose of trying all or any specified classes of suits or appeals relating to land arising in the local area."

Investment of officers with powers of Civil Courts.

As to the cancellation of such order, see section 136 (1), (2), (3).

As to control over those officers and appeals from and revision of their decrees, see section 137.

"Section 140.—(2) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue Officer under this section, but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue Officer."

Deposits on account of payment.

"Section 158. Except as otherwise provided by this Act :

"(1) A Civil Court shall not exercise jurisdiction in any matter which the Local Government⁴ or a Revenue Officer is empowered by this Act to dispose of or take cognizance of the manner in which the Local Government⁴ or any Revenue Officer exercises any power vested in it or him by or under the Act ; and in particular—

Bar of jurisdiction.

"(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely :

¹ In the North-West Frontier Province read "Chief Commissioner" : Reg. VII of 1901, s. 6 (1) (b).

² Inserted for the Punjab by the Punj. Act V of 1912, s. 8.

³ Act XVIII of 1884, which was repealed in the North-West Frontier

Province by Reg. VII of 1901, s. 5, and in the Punjab by Punj. Act III of 1914 ; now see *ante*, chap. xxii.

⁴ In the North-West Frontier Province read "Chief Commissioner" : Reg. VII of 1901, s. 6 (1) (b).

- (i) any question as to the limits of any land which has been defined by a Revenue Officer as land to which this Act does or does not apply ;
- (ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue Officer as such ;
- (iii) any claim to the office of kanungo, zaildar, inamdar or village officer, or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof ;
- (iv) any notification directing the making or revision of a record of rights ;
- (v) the framing of a record of rights or annual record, or the preparation, signing, or attestation of any of the documents included in such a record ;
- (vi) the correction of any entry in a record of rights, annual record, or register of mutations ;
- (vii) any notification of the undertaking of the general re-assessment of a district or tahsil having been sanctioned by the Governor-General in Council ;
- (viii) the claim of any person to be liable for an assessment of land revenue or of any other revenue assessed under this Act ;
- (ix) the amount of land revenue to be assessed on any estate or to be paid in respect of any holding under this Act ;
- (x) the amount of, or the liability of, any person to pay any other revenue to be assessed under this Act, or any cess, charge, or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force ;
- (xi) any claim relating to the allowance to be received by a landowner who has given notice of his refusal to be liable for an assessment or any claim connected therewith, or arising out of, any proceedings taken in consequence of the refusal of any person to be liable for an assessment under this Act ;
- (xii) the formation of an estate out of waste land ;
- (xiii) any claim to hold free of revenue any land, mills, fisheries, or natural products of land or water ;

- (xiv) any claim connected with, or arising out of, the collection by the Government, or the enforcement by the Government, of any process for the recovery of land revenue or any sum recoverable as an arrear of land revenue ;
- (xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue ;
- (xvi) the amount of, or the liability of any person to pay any fees, fines, costs, or other charges imposed under this Act ;
- (xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title¹ in any of the property for which partition is sought ;²
- (xviii) any question as to the allotment of land or the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical redistribution of land revenue on the partition of an estate or holding, or on a periodical redistribution of land, or as to the distribution of rent on the partition of a tenancy ;
- (xviii^a)³ any question connected with, or arising out of, or relating to, any proceedings for the determination of boundaries of estates subject to river action under sections 101A, 101B, 101C, and 101D, respectively, of chapter xviii ;
- (xix) any claim to set aside or disturb a division, or appraisement of produce confirmed or varied by a Revenue Officer under this Act ;⁴
- (xx) any question relating to the preparation of a list of village cesses, or the imposition by the Local Government⁵ of conditions on the collection of such cesses ;

¹ *Ghulam Haidar v. Amir Haidar* (1919), 1 Lahore, 298 ; 2 Lahore L. J., 192.

² *Singh Ram v. Data Ram* (1921), 8 Lahore, 4.

³ Added by Punj. Act I of 1899, s. 8.

⁴ Where there is a question of title a suit lies in a Civil Court: *Ramji Lal v. Mangal Singh* (1921), 2 Lahore, 802.

⁵ In the North-West Frontier Province read "Chief Commissioner": Reg. VII of 1901, s. 6 (1) (b).

- (xxi) any proceeding under this Act for the commutation of the dues of a superior landowner;
- (xxii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land revenue; or
- (xxiii) any claim arising out of the liability of an assignee of land revenue to pay a share of the cost of collecting or re-assessing such revenue, or arising out of the liability of an assignee to pay out of assigned land revenue, or of a person who would be liable for land revenue, if it had not been released, compounded for, or redeemed to pay on the land revenue for which he would but for such release, composition, or redemption be liable, such a percentage for the remuneration of a zaildar, inamdar, or village officer as may be prescribed by rules for the time being in force under this Act."

United Provinces.

The United Provinces Land Revenue Act, 1901,¹ extends to the whole of the United Provinces except certain specific areas² to some of which it has now been extended. It has been continued in force with modifications in territory transferred to the Delhi Province.³

It includes the following provisions as to suits in Civil Courts:

Disputes as to
entries in
annual
registers.

No order as to possession passed under section 40 by the Collector in the settlement of disputes as to entries in annual registers shall debar any person from establishing his right to the property in any Civil Court having jurisdiction.⁴

No such entry or a decision of the Collector as to who is entitled to the property shall affect the right of any person to claim and establish in the Civil Court any interest in land which requires to be recorded in the registers prescribed by section 32.⁵

¹ U. P. Act III of 1901. As to the Pargana of Kaswar Raja in the district of Benares, see U. P. Act VI of 1915.

² See Sch. I.

³ Act VII of 1915, s. 3, Sch. III.

⁴ U. P. Act III of 1901, s. 40 (3).

⁵ *Ibid.* s. 44.

Chapter vii of the Act provides for the partition and union of mahals by the Collector.¹

If an objection to partition is made by a recorded co-sharer, involving a question of proprietary title² which has not been already determined by a Court of competent jurisdiction, the Collector may either—

- (a) decline to grant the application until the question in dispute has been determined by a competent Court; or
- (b) require any party to the case to institute within three months a suit in the Civil Court for the determination of such question; ³
- (c) proceed to inquire into the merits of the objection,⁴ the Collector's decision which last case all decrees passed by him shall be held to be decrees of a Court of Civil jurisdiction of the first instance and shall be open to appeal to the District Judge or High Court, or the Judicial Commissioner,⁵ as the case may be, under the rules applicable to appeals to those Courts.⁶

No order made by the Board requiring the proprietor of an under-assessed estate to refund to the proprietor of an over-assessed estate can be questioned in any Civil or Revenue Court.⁷

If no application under section 173 is made within the time allowed therefor, all claims on the ground of irregularity or mistake in publishing or conducting the sale shall be barred.

Nothing herein contained shall bar the institution of a suit in the Civil Court for the purpose of setting aside a sale on the ground of fraud.⁸

Any suit brought or application made in a Civil or Revenue Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the

Partition, objection to raising question of title.

Collector's decision equivalent to decree of Civil Court.

Bar of claims founded on irregularity or mistake.

Bar of suit against certified purchaser.

¹ Cf. *ante*, pp. 624-626. The claim to partition under this Act does not apply to a claim by a mere mortgagee: *Banke Lal v. Shanti Prasad* (1913), 35 All., 387, or to a widow in possession by virtue of an arrangement for maintenance: *Pema v. Jas Kunwar* (1913), 35 All., 527; *Kailashi Kunwar v. Badri Prasad* (1913), *ibid.* 548.

² See *Muhammad Nasar-ullah Khan*

v. Muhammad Ishaq Khan (1910), 32 All., 523.

³ As to the effect of permission to file a fresh suit, see *Randhir Singh v. Bhagwan Das* (1913), 35 All., 541.

⁴ U. P. Act III of 1901, s. 111.

⁵ *Ante*, p. 240.

⁶ U. P. Act III of 1901, s. 112.

⁷ *Ibid.* s. 187.

⁸ *Ibid.* s. 175.

certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.¹

Payment of
revenue under
protest.

In case of proceedings being taken against any person for the recovery of an arrear of revenue a suit may be brought against the Government in the Civil Court for the amount paid under a protest in writing, signed by such person or by an agent duly authorised in his behalf.²

Reference to
arbitration.

"Section 207. A decision under section 206 according to an award is not open to appeal unless the decision is in excess of, or not in accordance with, the award, or unless the decision is impugned on the ground that there is no valid award in law, or in fact.

"And no person shall institute any suit in the Civil Court for the purpose of setting it aside or against the arbitrators on account of their award."³

This does not bar a separate suit on title to recover possession of property,⁴ or a suit between tenants of adjoining holdings to determine whether a parcel of land belongs to the one holding or to the other.⁵

"It is clear that in Oudh, in cases in which Act III of 1901 applies, the Court of Revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands, and what are the special or other terms upon which such tenant holds, and that the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or an under-proprietary right in the lands."⁶

Matters
excepted from
cognizance of
Civil Courts.

Section 238. No person shall institute any suit or other proceeding in the Civil Court with respect to any of the following matters :—

- (a) the arrangement of patwaris circles ;
- (b) claims by any person to any of the offices of patwari,⁷ kanungo,⁸ or lambardar,⁹ or to any emolment or fees appertaining to such offices, or in respect of any injury caused by his exclusion therefrom, or claims by any person to nominate persons to such offices ;
- (c) the liability of any land as has not been wholly exempted from such liability by special grant of, or

¹ U. P. Act III of 1901, s. 178.

² *Ibid.* s. 183.

³ See *Dalip Singh v. Man Kunwar* (1921), 48 All., 889.

⁴ *Tapsi Singh v. Hardeo Singh* (1917), 39 All., 711.

⁵ *Ibid.*

⁶ *Mohammad Abul Husan Khan (Raja) v. Ram Pargash* (1916), F. C. 19 Bom. L. R., 202, at p. 205.

⁷ S. 28.

⁸ S. 25.

⁹ S. 45.

- contract with, the Government or by the provisions of any law for the time being in force ;¹
- (d) the formation of a record of rights, or the preparation, signing or attestation of any of the documents contained therein, or the preparation of the annual registers ;
 - (e) the claim of any person to engage for the payment of revenue, or the validity of any engagement with Government for the payment of revenue, or the amount of revenue, cess or rate assessed or to be assessed, or distributed or to be distributed, on any mahal or portion of a mahal, or specific area under this or any other Act for the time being in force or the amount to be paid to a proprietor by an inferior proprietor when that amount has been fixed by the Settlement Officer, or the declaration of assessment, or the terms of any settlement ;
 - (f) any claims connected with, or arising out of, any process enforced on account of neglect or refusal to accept the assessment or terms of sub-settlement proposed by the Settlement Officer ;
 - (g) any matters provided in sections 75 to 83² (both inclusive) ;
 - (h) the preparation of the record referred to in sections 84 and 85 ;
 - (i) save as provided in section 44,³ the determination of the class of a tenant, or of the rent⁴ payable by him, or the period for which such rent is fixed under this Act ;
 - (j) any matters provided for in sections 92, 93, and 98 ;⁵
 - (k) partition or union of mahals except as provided in sections 111 and 112.⁶

¹ S. 58.

² These sections give certain powers to settlement officers.

³ Allowing a claim in a Civil Court to any interest in land which is required to be recorded in the prescribed registers.

⁴ This means a contractual rent, and does not apply to a custom to levy fruits: *Sheoambar Ahir v. Collector of Asamgarh* (1912), 34 All., 358.

⁵ As to Revenue-free grants.

⁶ *Ante*, p. 655. *Nuthi Mal v. Tej Singh* (1907), 29 All., 604; *Bijai Misir v. Kali Prasad Misir* (1917), 39 All., 469; *Shambhu Singh v. Daljit Singh* (1916), 38 All., 243; *Lachman Das v. Hanuman Prasad* (1910), 33 All., 169; *Ram Subhag Singh v. Dip Narain Singh* (1921), 44 All., 74. As to partition of a building, see *Narain Dass v. Bhup Narain* (1909), 31 All., 330.

A suit for possession is not barred.¹

A suit does not lie to correct a mistake made in a partition.²

¹ *Lal Bihari v. Parkali Kumwar* (1920), 42 All., 809; *Kalka Prasad v.*

Manmohan Lal (1916), 38 All., 802;
Shambhu Singh v. Daljit Singh (1916),

ibid. 243.

² *Tirbeni Sahai v. Gokul Prasad* (1911), 38 All., 440.

PART VIII.

CHAPTER LIX.

COURTS OUTSIDE BRITISH INDIA.

THERE are certain statutory provisions which give Courts in India power to take evidence and give opinions in cases pending in Courts outside British India.

As to British Courts in Native States, see *ante*, pp. 324, 325.

By the Foreign Tribunals Evidence Act, 1856,¹ a Supreme Court² in India and any judge of any such Court, and every judge in India who by an order of His Majesty in Council may be appointed for the purpose³ may order the examination of witnesses within the jurisdiction of such Court or Judge in civil or commercial matters pending in a Foreign Court or tribunal.⁴

By the Evidence by Commission Act, 1859,⁵ a similar provision is made for the taking of evidence in actions, suits, or proceedings pending before any Court or tribunal in His Majesty's dominions.⁶

The Court has power in such case to appoint an examiner.⁷ Courts in one part of His Majesty's dominions may remit a case for the opinion in law of a Court in any other part

Order for examination of witnesses in relation to matters pending before foreign tribunal.

Evidence in matters pending in Court in His Majesty's dominions.

Appointment of examiner. Ascertainment of law of British or Foreign State.

¹ 19, 20 Vict. c. 113.

² This expression would apparently mean a Court which is supreme in any particular Province. When the Act was passed the only Supreme Courts in name were those which had been established in Calcutta, Madras, and Bombay, but the expression used in the Act is wide enough to include other supreme

Courts since established: cf. *Administrator-General v. Prem Lal Mullick* (1895), 22 I. A., 107; 22 Calc., 788.

³ 19, 20 Vict. c. 113, s. 6.

⁴ *Ibid.* s. 1.

⁵ 22 Vict. c. 20.

⁶ *Ibid.* s. 1.

⁷ 48, 49 Vict. c. 74, s. 2.

thereof.¹ There is also a power by which a High Court can remit a case with queries to a Court of a Foreign State with which His Majesty may have made a convention for that purpose for ascertaining the law of such State as to the facts in question.²

Cases within
Foreign
Jurisdiction
Act.

The King in Council may confer on any Court in any British possession, or held under the authority of His Majesty, any jurisdiction civil, criminal, original, or appellate which may lawfully by order in Council be assigned to or conferred on any British Court in any foreign country.³

¹ 22, 23 Vict. c. 68.

² 53, 54 Vict. c. 37, s. 9.

³ 24, 25 Vict. c. 11.

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